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December 23, 2014

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20544

**Re:   *Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57***  
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Dear Ms. Dortch:

Comcast Corporation and Time Warner Cable Inc. (the “Applicants”) hereby submit the fully redacted, public version of the Applicants’ Reply to Responses (“Reply”) in the above-captioned proceeding. The {{ }} symbols in the Reply denote where Highly Confidential Information has been redacted, and the [[ ]] symbols denote where Confidential Information has been redacted.

A Highly Confidential version of the Reply has been filed with the Office of the Secretary under separate cover. The Confidential and Highly Confidential versions of this filing will be made available for inspection pursuant to the terms of the *Second Amended Modified Joint Protective Order* in this proceeding.<sup>1</sup>

Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

/s/ Francis M. Buono

Francis M. Buono  
*Counsel for Comcast Corporation*

Enclosures

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<sup>1</sup>       *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, Second Amended Modified Joint Protective Order, MB Docket No. 14-57, DA 14-1639 (Nov. 12, 2014) (“Second Amended Modified Joint Protective Order”).*

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of	)	
	)	
Comcast Corp.,	)	
Time Warner Cable Inc.,	)	MB Docket No. 14-57
Charter Communications, Inc., and	)	
SpinCo	)	
	)	
For Consent To Assign or	)	
Transfer Control of	)	
Licenses and Authorizations	)	

**REPLY TO RESPONSES**

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December 23, 2014

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**REPLY TO RESPONSES**

**I. INTRODUCTION AND SUMMARY**

With today’s filings, the formal pleading cycle in this proceeding is complete, and the Commission has before it an extraordinarily robust evidentiary record to support its review. Applicants’ Public Interest Statements, our comprehensive Opposition to Petitions to Deny and Response to Comments (“Opposition and Response”), the detailed expert economic and engineering declarations we have submitted, our responses to extensive information requests and other Commission staff inquiries, and the hundreds of substantive comments from supportive third parties powerfully demonstrate that Comcast Corporation’s (“Comcast”) acquisition of Time Warner Cable Inc. (“TWC”) and certain Charter Communications, Inc. (“Charter”) systems (collectively, the “Transaction”) is strongly in the public interest. This Transaction does not involve competitors seeking to merge rather than compete for customers; indeed, there will be *no*



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reduction in competition in any relevant market – including broadband, video, or voice. And the rhetoric and unsupported concerns of the critics of the Transaction cannot substitute for fact-based and data-driven analysis. Rather, any objective review of the record leads convincingly to only one conclusion: The Transaction will deliver substantial public interest benefits and generate no cognizable competitive harms.<sup>1</sup>

The media and communications industry of today is fundamentally different from the industry of 20, 10, or even just five years ago, and is one marked by continued technological evolution and constant change. In the face of a rapidly evolving media and technology landscape – with increasing competition from sophisticated companies with national footprints like DBS providers that can offer a uniform, nationwide service, as well as companies with a global presence like Apple, Microsoft, and Amazon, and the enormous success of online video distributors (“OVDs”) – Comcast has begun the process of transforming itself from a regional cable company into a leading media and technology company. This Transaction is part of the natural evolution of the industry – and of Comcast – in response to new competitive dynamics, and one that will bring about significant public interest benefits. For example, former New York City Mayor Michael Bloomberg, now CEO of Bloomberg L.P., captured the competitive and technological dynamism of this industry well in a recent article he wrote on the “Leadership Secrets of the Great CEOs,” in which he praised Comcast’s leadership and (despite having had some concerns with the *Comcast-NBCUniversal* joint venture) supported *approval* of this Transaction:

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<sup>1</sup> While Charter is not a signatory to this pleading, that is because it focuses on issues regarding the Comcast-TWC transaction. Charter agrees that the Comcast-TWC transaction is in the public interest, does not produce cognizable competitive harms, and should be approved.

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**Brian Roberts.** Few industries have changed as much over the past two decades as telecommunications, and few people have embraced the changes more eagerly than Brian. Since becoming president of Comcast (CMCSA) in 1990, he has built a diversified multimedia company that has capitalized on the Internet revolution and the explosion in consumer demand for content and communications that it created. The pace of change in the telecom industry will increase exponentially in the years ahead. That's why I think regulators, after doing their due diligence and negotiating conditions, will recognize that the Comcast-Time Warner Cable (TWC) merger is part of the natural evolution of an industry that will continue to be subject to major disruptions from technological advances. Brian, who knows the industry as well as anyone, is exactly the guy you'd want leading your company into that ultracompetitive arena.

Applicants have shown that the Transaction will produce substantial benefits for consumers and businesses. These include: (1) network upgrades for the acquired systems, starting with transitioning all systems to digital at a pace substantially faster than TWC could achieve alone; (2) faster broadband speeds, especially in the acquired markets, increased broadband competition, and expanded broadband adoption; (3) greater availability of advanced video and voice services; (4) more video-on-demand ("VOD") and TV Everywhere ("TVE") choices; (5) enhanced business services competition throughout large parts of the country; (6) a more robust and expansive Wi-Fi network; and (7) accelerated deployment of advanced advertising technologies. These benefits will be driven both by efficiencies from enhanced scope and scale and by Comcast's demonstrated commitment to invest and successfully integrate and upgrade acquired cable systems. In particular, Comcast will invest hundreds of millions of dollars annually to upgrade the acquired systems in order to accelerate the delivery of these benefits to certain markets within 12 months and to *all* acquired markets within 36 months of the closing date of the Transaction. This will spur competitors and complementary players alike to invest, further fueling the virtuous cycle of innovation and investment in broadband networks, technology, and services.

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As Applicants have demonstrated in our Public Interest Statements and Opposition and Response, these transaction-specific benefits are precisely the kind of verifiable, non-speculative benefits that the Commission has long recognized as satisfying its public interest standard. Applicants have also submitted expert economic declarations by Dr. Mark Israel of Compass Lexecon, Dr. Dennis Carlton of the University of Chicago, and Dr. Gregory Rosston of Stanford University and Dr. Michael Topper of Cornerstone Research, which further describe and substantiate these benefits in detail.

Other parts of the record strongly corroborate these benefits. The record includes nearly 600 substantive comments from a wide range of parties who support the Transaction, including more than 100 Chambers of Commerce and business organizations; a substantial and diverse group of businesses ranging from start-ups to national technology equipment makers; more than 30 programmers; numerous economists, professors, and antitrust experts; nearly 200 diversity groups and community partners; leading advertisers; private citizens; and more than 100 state and local leaders and elected officials – including most recently from Pennsylvania Senators Bob Casey and Pat Toomey, who urged the Commission to approve the Transaction as quickly as possible. These supporters have offered concrete and personal accounts of their positive experiences with Comcast and attested to the company's character and commitment to the communities it serves; to the substantial investments and system upgrades it has made; to the innovations it has pioneered; and to the diversity, accessibility, broadband deployment, and community initiatives it has spearheaded.

In contrast, petitioners and other opponents of the Transaction have failed to make a case against approval of the applications. Importantly, while they level various conclusory allegations, these opponents do not meaningfully contest or contradict the substantial benefits

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that Applicants have demonstrated and supported with compelling evidence. Rather, the opponents' various theories of harm are speculative and self-serving, and are undeniably outweighed by the proven public interest benefits from the Transaction.

These opponents fall into several categories:

- Direct competitors, such as CenturyLink and Dish, blatantly seeking protection from the forces of fair competition that would *benefit* consumers;
- Programmers, such as Discovery, RFD-TV, TheBlaze, and Back9, attempting to leverage the transaction-review process to obtain higher fees and terms they could not reasonably expect in the competitive marketplace – which would ultimately raise rates for consumers. In this regard, it is worth noting that even in the face of exponential increases in programming costs, Comcast has done its best to control prices for the benefit of its customers. While Comcast's programming costs increased by over 120 percent from 2004 through 2013, Comcast's prices to customers rose at about *half* that rate during the same time period. And the same is true industry-wide, as programming costs have increased significantly faster than the average annual increase in expanded basic service cable pricing over the same period, as reported by the Commission last week;
- Parties, such as Netflix and Cogent, using this proceeding (as one of many) to pursue non-transaction-specific policy and business objectives, including seeking the Commission's help to pass their businesses' transmission costs onto others;
- Parties, such as Viamedia, RCN, and COMPTTEL, attempting to achieve their parochial business interests in the advertising, broadband, and other markets and making half-hearted efforts to try to find a link to the Transaction; and
- Public interest groups, such as Consumer Federation of America ("CFA"), Consumers Union, Free Press, and Public Knowledge, asserting the same worn and unconvincing theories of harm that they have raised in virtually every industry transaction over the past two decades.

As discussed below and detailed in the comprehensive chart attached as **Exhibit A** (providing a summary of Applicants' responses to key issues raised by opponents), opponents' claimed harms to broadband competition and to the video distribution and video programming marketplace, and other theories are meritless, and, in all events, are significantly outweighed by the Transaction's clear and demonstrated benefits for consumers and businesses.

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*No Harm to Broadband Competition.* With respect to the retail broadband market, various critics – including a number of professors who signed on to a letter drafted by a law firm representing Netflix in the Transaction and submitted on October 20 – continue to try to throw up dust around the notion that the Transaction will give Comcast an overwhelming share of a “national broadband market.” But, as Applicants have shown, these theories of harm are based on an improper definition of the broadband market divorced from marketplace realities and well-established principles of economic analysis. There is no “national broadband market.” Consumers choose broadband providers at the local – not national – level, and the Transaction will have no impact on local broadband shares and will in no way reduce the number of broadband choices available to consumers. Even if one were to ignore the record evidence and prior Commission and DOJ precedents, and assume a “national broadband market,” these critics’ assessment of Comcast’s putative “share” ignores the realities of DSL and mobile wireless competition – millions of customers can and do use those types of connections and continue to purchase them today.

And yet with all that said, the salient fact is that even at the most extreme speed threshold of 25 Mbps, the Transaction has no material impact on competition: The combined company’s broadband share would increase by *only 1 percent*. In the attached **Exhibit B**, Dr. Israel analyzes and responds to the broadband data provided by the Commission in its December 9 memorandum, which, Dr. Israel explains, has little or no bearing on analysis of the competitive effects of the Transaction and indeed *understates* broadband competition by not taking mobile broadband into account. Dr. Israel reiterates that there is no “national broadband market” and notes that the Commission’s data at each speed threshold used {{

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Some parties have tried another route, arguing instead that the real harm threatened by the Transaction is the creation of undue market power in peering, which Comcast would allegedly use to disadvantage or degrade OVDs and other edge providers. The most vocal proponents of this theory are Netflix and Cogent, whose arguments are not only flawed, but are also fundamentally non-transaction-specific. Their arguments and allegations all relate to pre-transaction conduct, and are also precisely the same points these parties have raised in general rulemaking proceedings and in the AT&T-DirecTV transaction proceeding. And in all events, their arguments and allegations are unpersuasive in the face of the basic facts and core points explained by Dr. Israel and Dr. Carlton:

- Competition in the Internet backbone market and the existence of many paths into Comcast's network limit Comcast's ability to foreclose edge provider (including OVD) access to Comcast's last-mile network. The market for backbone transit is highly competitive (with prices having plummeted 99 percent in the last 15 years), and there are dozens of settlement-free routes into Comcast's network, as well as many other substantial commercial peering and transit connections with CDNs and ISPs. Many edge providers can and do use these multiple links to send their traffic onto Comcast's network, without the need for any direct interconnection with Comcast. Indeed, a viable broadband service must maintain these links. This fact is independent of the size of the broadband provider's network and places a strong check on any theoretical untoward interconnection behavior, with or without the Transaction. As a result, notwithstanding the growth of Comcast's putative "national *retail* market" share, Comcast will not have any ability in this distinct, competitive, and porous market to harm edge providers.
- Comcast also lacks the incentive to degrade the traffic of edge providers, including OVDs, that are key complements to Comcast's high-growth broadband service in which Comcast has invested tens of billions of dollars. Comcast needs edge providers to offer attractive content, applications, and services so that existing and new Internet customers continue to demand Comcast's broadband service. Attempting to degrade or foreclose OVDs would significantly harm Comcast's broadband business, because broadband subscribers would likely switch to another broadband provider or downgrade from/forego upgrading to Comcast's higher broadband tiers, without *any* benefit to Comcast's video business. Dissatisfied OVD users could also switch to Comcast's video rivals, given the intense competitiveness of the MVPD landscape and the declining subscriber share of cable operators in favor of telcos and DBS providers over the last decade. Moreover, Comcast has an

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additional *disincentive* to harm OVDs – as they are significant purchasers of NBCUniversal content.

- To the degree the theory is that Comcast’s greater “national *retail* market” share gives it the ability to harm OVDs on its last mile network, this theory fails as well: Comcast is the only Internet service provider in the nation that has agreed to be bound by the Commission’s previous Open Internet rules prohibiting it from blocking or unreasonably discriminating against edge providers’ traffic on its network, and this condition will apply to the TWC systems and acquired Charter systems post-transaction.
- And that is especially true given that the retail broadband market is competitive and highly dynamic today and is becoming increasingly so, as fiber-to-the premises, DSL (including fiber-to-the-node), mobile wireless, satellite, and other broadband technologies continue to evolve toward higher speeds and are introduced into new communities (e.g., AT&T’s recent launch of its gigabit broadband service, GigaPower, in parts of North Carolina, as well as Google Fiber’s targeting of that state, a TWC market, for its fiber broadband deployment). Moreover, as demonstrated by survey evidence and customer churn data Applicants have submitted into the record and fully substantiated, broadband customers will, can, and often do switch ISP providers, even to those offering *lower speeds*, if they become dissatisfied with their broadband service.

***No Harm to Any Part of the Video Programming Market.*** Programmer-related monopsony and bargaining power claims are equally unfounded and have no basis in law or fact. Discovery, for example, theorizes that the Transaction could allow Comcast to “use its enhanced leverage . . . to impose onerous terms that jeopardize the ability of independent programmers like Discovery to continue investing in a diverse portfolio of content and brands.” It is, of course, patently absurd for Discovery to claim that it speaks on behalf of “independent” programmers – after all, Discovery is the seventh largest cable programmer by revenues with dozens of content assets and a market capitalization of over \$25 billion, not to mention its affiliation with two cable operators. More importantly, the overwhelming and uncontested record evidence completely refutes its and various other programmers’ self-serving claims. Merely repeating these same, unsubstantiated claims does not make them true. Specifically, the record contains the following



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key facts and evidence that negate any program carriage concerns – and the even more diffuse, less-transaction-specific, program access concerns:

- After divestitures, Comcast will add approximately seven million net customers and manage systems serving less than 30 percent of all residential MVPD subscribers – approximately the same share approved by the Commission in the *AT&T Broadband* and *Adelphia* transactions.
- The D.C. Circuit has previously concluded that a 30 percent “ownership cap” based on monopsony power concerns was too low and that based on the record of MVPD competition in 2009, a cap lower than *60 percent* could not have been justified. Of course, MVPD competition has only increased in the half-decade since these findings were made, and OVDs provide additional distribution options for programmers; indeed, recent reports indicate that Netflix is now one of the biggest purchasers of content in the market, as Netflix’s Chief Content Officer told an investor group during a December 8 presentation. In today’s fiercely competitive video distribution marketplace, programmers enjoy significant bargaining leverage (as evidenced by rising programming costs), and monopsony concerns are simply not credible.
- Concerns about Comcast’s supposed increased bargaining leverage post-transaction are not substantiated by any evidence in the record or supported by economic theory. But it is indisputable that programmers have gained increased bargaining leverage over the past several years – including with respect to Comcast and other large MVPDs – and these dynamics ensure that the Transaction is unlikely to create any distortion in the program carriage marketplace. If anything, as Drs. Rosston and Topper have shown, any incremental cost savings that Comcast would be able to achieve post-transaction are likely to redound to the benefit of consumers, while not harming programming output or quality.
- Comcast has a stellar record of support for independent programmers. Today, Comcast carries over 160 independent networks, including many small, diverse, and international ones, and six out of every seven networks carried by Comcast are unaffiliated with the company. Since 2011, Comcast has added 20 independent networks, and has substantially expanded carriage of *141 independent networks by over 217 million customers, collectively*. Comcast is committed to creating a positive environment for independent programmers and ensuring that independent voices are able to reach new audiences across the country. This is why the vast majority of programmers – and independent programmers – who have weighed in on the Transaction support it unequivocally.
- Likewise, the Transaction will not increase Comcast’s incentive or ability to withhold or demand supra-competitive prices for affiliated programming from rival MVPDs or OVDs. This Transaction involves a small amount of acquired video programming, and a withholding strategy makes no economic sense, as it would only harm NBCUniversal’s bottom line. Indeed, NBCUniversal has reached programming



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renewal agreements with all MVPDs with which it negotiates, and has licensed programming to various OVDs without their resort to arbitration. The existing program access rules and the *NBCUniversal Order* conditions mitigate any remaining theoretical concerns.

- Relatedly, Applicants have demonstrated that the Transaction will not give Comcast greater incentive or ability to impose “most favored nations” (“MFN”) or “alternative distribution methods” (“ADM”) provisions that harm programmers or impede the ability of MVPDs and OVDs to obtain programming on favorable terms. Comcast’s understanding is that, to the degree many programmers are refusing to license programming to OVDs, they are not being constrained by MFNs or ADM provisions, but are being guided by their own business considerations. And, in all events, OVDs have certainly been able to obtain rich amounts of content – OVDs like Netflix have enjoyed enormous growth over the past five years. For its part, Comcast typically does not prohibit networks from licensing live linear content to any OVD for a fee even to the degree it is permitted to do so under the *NBCUniversal* conditions (i.e., for 14 days), and only prohibits *free* online distribution for (at most) the first 30 days after programming is initially aired. If anything, the Transaction should mitigate any perceived concerns about these issues given (1) Comcast’s practice of acquiring non-exclusive content for its customers rather than restricting others’ ability to obtain content, and (2) the limitations under the *NBCUniversal* conditions.
- Drs. Rosston and Topper submitted detailed economic and econometric analyses – using the Commission’s own methodologies from the *NBCUniversal Order* – showing that: (1) the Transaction will not generate market power in program buying or program selling; (2) Comcast has not favored its own programming, and the Transaction will not increase Comcast’s incentives to foreclose or harm unaffiliated content providers to favor its own programming; and (3) there is simply no support for claims that the Transaction will lead Comcast to attempt to use its programming to disadvantage its video distribution rivals – something the *NBCUniversal Order* ensures it cannot do in any event.

***Other Theories of Harm Are Also Without Merit.*** The other imaginative harms advanced by critics regarding advertising, set-top boxes, customer service, voice competition, PEG access, and various other claims are similarly unsupported and unavailing. In each case, as Applicants have shown, marketplace facts, economic analyses, and other record evidence demonstrate that the theorized harms are unsubstantiated, without merit, and generally not transaction-related in any way.

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For example, Viamedia’s concerns about the potential negative effects of the Transaction on the advertising market amount to little more than an attempt – and a weak one at that – by a competitor of Comcast and TWC to use this proceeding to advance its own business interests. This is made abundantly clear not only by Viamedia’s strained theory of harm, but also by the stark fact that the only advertisers that have filed in this proceeding strongly support the Transaction.

Similarly, equipment-related claims, such as those recently raised by Public Knowledge et al., regarding Comcast’s authentication practices and the X1 platform are wholly unrelated to the Transaction and have no basis in fact. Comcast is focused on providing its customers with the best TVE experience on customer-owned devices, and is expanding, not limiting, its customers’ device and video choices, as evidenced by the strong support for the Transaction that commenters like TiVo have provided. In this regard, Comcast and Roku recently announced an agreement (several months in the making) whereby Comcast customers can access the HBO Go and Showtime Anytime TVE apps on their Roku devices, joining other platforms like AppleTV, Xbox One, and Google’s Chromecast where customers can access shows and movies from these networks.

Perhaps recognizing the weakness of the disparate arguments here, certain critics of the Transaction have banded together as the “Stop Mega Comcast Coalition” to try to give more heft to the arguments they have already asserted in this proceeding. However, the newly formed “coalition” opposing the Transaction is not “new” at all. This group, consisting of Dish Network, Public Knowledge, CFA, TheBlaze, Sports Fans Coalition, WeatherNation, et al., is merely a subset of the same cadre of opponents that have already filed in this proceeding (and largely the same parties to the “coalition” that opposed the *Comcast-NBCUniversal* transaction).

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Merely repackaging their repeatedly discredited theories of competitive harm does not lend those theories any more weight or credibility. Their broadband-, programming-, equipment-, and advertising-related claims fare no better the second time around.

The handful of other critical comments, early-filed reply comments, and other submissions since Applicants submitted our Opposition and Response on September 23 likewise have not presented any credible evidence of harm, much less undermined the Transaction's substantial benefits. As shown below, these filings either repeat arguments raised in the prior round of comments that Applicants have already refuted, or raise extraneous issues that are outside the scope of this proceeding. In contrast, comments filed by several parties – including Progressive Policy Institute, the International Center for Law & Economics, BERLINE, Castalia Communications, ADTRAN, and others – further underscore the substantial benefits to consumers, businesses, independent programmers, advertisers, and communities across America that will result from the Transaction.

\* \* \*

Comcast recognizes that acquisitions that increase a company's size often give rise to concerns from consumers and policymakers alike. But, as noted above, this Transaction will leave Comcast with roughly the same percentage of MVPD customers that it served after two prior cable transactions approved by the Commission at a time when MVPD competition was much less pronounced than it is today. Those prior transactions gave Comcast the reach to evolve and to undertake the investment and innovation that have resulted in the availability of advanced video services and fast broadband across Comcast's footprint. For the same basic reasons, the synergies and benefits resulting from this Transaction will be profoundly good for consumers and businesses, unleashing even more innovation, enhanced services, and

competition. And, as in each of those prior cases, this Transaction will yield these substantial public interest benefits without resulting in any of the harms that opponents have claimed – harms similar to the doom and gloom predictions (which never materialized) in 2002 and 2005/2006 during the Commission’s review of Comcast’s prior cable deals. Now, as then, the Transaction poses no threat to the public welfare, but indeed promises to enhance it in concrete and undeniable ways. Applicants, therefore, respectfully urge the Commission to expeditiously approve the Transaction.

**II. APPLICANTS HAVE DEMONSTRATED THAT THE TRANSACTION WILL FURTHER THE PUBLIC INTEREST, AND COMMENTERS HAVE NOT PROVIDED ANY EVIDENCE UNDERMINING THE BENEFITS OF THE TRANSACTION.**

Applicants’ Public Interest Statement, Opposition and Response, the declarations and reply declarations submitted by Dr. Israel and Drs. Rosston and Topper, and the declaration of Dr. Carlton detail the many verifiable, merger-specific benefits the Transaction will bring to millions of additional consumers and businesses and dispel any doubts that the Transaction will serve the public interest, convenience, and necessity. Nearly 600 supportive letters and comments from third parties – elected officials, community organizations, diversity groups, businesses and chambers of commerce, programmers, and advertisers, among others – further reinforce this conclusion.<sup>2</sup>

Significantly, none of the petitions to deny filed initially in this proceeding meaningfully challenged these well-established public interest benefits, and neither the handful of formal comments filed on September 23 nor the early-filed reply comments of several parties change that conclusion. Rather, since Applicants filed our Opposition and Response, many more

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<sup>2</sup> See, e.g., Opposition and Response at 4-12 (detailing the many letters and comments from third parties that support the Transaction). Unless otherwise noted, all citations to comments, petitions, letters, or *ex parte* notices herein are those filed in MB Docket No. 14-57.

supportive letters and comments have been submitted, highlighting these benefits and Comcast's proven track record as an industry leader and adding to the already-substantial record evidence of the benefits this Transaction will bring to millions of residential and business customers.

***Accelerated Deployment of Advanced Broadband Services, Increased Broadband Competition, and Expanded Broadband Adoption.*** The Transaction will deliver significant broadband-related benefits throughout the combined company's footprint, particularly to the acquired systems. With greater scale, Comcast's commitment to substantial additional investment, and its experience and expertise in integrating and upgrading cable systems, the combined company will be able to accelerate upgrades to an all-digital broadband network (and complete those upgrades more quickly than TWC could do on its own), faster broadband speeds, innovative broadband technologies, and a more ubiquitous Wi-Fi network.<sup>3</sup>

In particular, although TWC announced plans to upgrade 75 percent of its footprint to all-digital within three years (today, only approximately 17 percent of its footprint is all-digital), Comcast is committed to upgrading 100 percent of the acquired TWC systems within that same timeframe – a critical investment and network upgrade necessary to achieve faster broadband speeds for more consumers. Indeed, as of December 2013, the average broadband speed enjoyed by Comcast customers is about [[ ]] Mbps versus about [[ ]] Mbps for TWC customers, and Comcast has increased several tiers of broadband speeds in many of its regions, effectively doubling the download speed for its flagship tier of service from 25 Mbps to 50 Mbps, increasing

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<sup>3</sup> See Comcast-TWC Public Interest Statement at 28-42; Israel Decl. ¶¶ 40-68, 187-188, 191-192; Opposition and Response at 36-50; Israel Reply Decl. ¶¶ 209-222; Rosston/Topper Reply Decl. ¶¶ 30-32, 34-37.

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the download speed for its Blast tier of service from 50 Mbps to 105 Mbps, and increasing the download speed for its Extreme tier of service from 105 Mbps to 150 Mbps.<sup>4</sup>

Increasing broadband speeds in TWC markets to match Comcast's speeds will provide immediate concrete benefits to consumers in those markets. Chairman Wheeler has stated that "[a] 25 Mbps connection is fast becoming 'table stakes' in 21st century communications," and has stressed the importance of ensuring that more Americans have access to these faster broadband speeds.<sup>5</sup> Today, *less than one tenth* of TWC customers enjoy speeds at or above 25 Mbps, whereas *more than half* of Comcast customers enjoy such speeds. The fastest way to achieve the Chairman's goal, and with maximum impact, is to approve this Transaction.

The International Center for Law and Economics ("ICLE") recently emphasized these broadband-related benefits that the Transaction would achieve:<sup>6</sup>

The transaction will bring significant scale efficiencies in a marketplace that requires large, fixed-cost investments in network infrastructure and technology. Before either Netflix or Comcast even considered using the Internet to distribute Netflix's video content, Comcast invested in the technology and infrastructure that ultimately enabled the Netflix of today. It did so at enormous cost (tens of billions of dollars over the last 20 years) and risk. Absent Comcast's broadband infrastructure investments we would still be waiting for our Netflix DVDs to be delivered by snail mail, and Netflix would still be spending three-quarters of a billion dollars a year on shipping. . . . The prospect of expanding economies of

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<sup>4</sup> See Opposition and Response at 37-38.

<sup>5</sup> Remarks of Tom Wheeler, Chairman, FCC, The Facts and Future of Broadband Competition, 1776 Headquarters, at 3 (Sept. 4, 2014), *available at* <http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition>.

<sup>6</sup> The eleven professors and scholars signing the joint ICLE comment include David Balto, Former Policy Director of the Bureau of Competition of the Federal Trade Commission; Babette E. Boliek, Associate Professor of Law, Pepperdine University; Donald J. Boudreaux, Professor of Economics, George Mason University; Henry N. Butler, Foundation Professor of Law, George Mason University; Richard A. Epstein, Laurence A. Tisch Professor of Law, New York University; Thomas A. Lambert, Wall Chair in Corporate Law and Governance, University of Missouri; Roslyn Layton, Fellow, Center for Communication, Media and Information Technologies, Aalborg University; Geoffrey A. Manne, Executive Director, International Center for Law & Economics; Scott E. Masten, Professor of Business Economics and Public Policy, University of Michigan; Paul H. Rubin, Dobbs Professor of Economics, Emory University; and Michael E. Sykuta, Associate Professor of Economics, University of Missouri.

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scale through this merger and then utilizing that to drive greater capital investment will ensure that this investment continues to accommodate the next transformative innovation in broadband and the content it delivers.<sup>7</sup>

In addition, as the combined company increases investment in its broadband network, it will incentivize other broadband providers to further invest in and improve their own networks and offerings to the benefit of consumers and edge providers alike, spurring broadband competition and the virtuous cycle of innovation that Chairman Wheeler has discussed in his remarks on broadband competition.<sup>8</sup> And consumers and edge providers will benefit from the extension of the now-vacated Open Internet protections to the acquired systems following the Transaction, which will provide important protections to consumers and edge providers until the Commission puts new rules in place.

Importantly, as hundreds of supportive commenters have noted, the Transaction will also expand Comcast's acclaimed *Internet Essentials* broadband adoption program, which has already connected more than 1.4 million individuals to the power of the Internet.<sup>9</sup> There is no program that compares in the nation. Indeed, the number of families that are benefitting from Comcast's

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<sup>7</sup> ICLE Reply Comments at 3-5; *see also* Progressive Policy Institute Reply Comments at 3 ("A merger may give the combined companies greater financial resources, efficiencies and ability to make investments that they would not have made otherwise. That is, the increased size will generate scale efficiencies that will likely increase investment."); Letter from Kathryn Wylde, President & CEO, The Partnership for New York City, to Chairman Wheeler, FCC, at 1-2 (Sept. 24, 2014) ("Comcast is a leader in initiatives to expand accessibility to Wi-Fi and improve speed and access for home and business customers . . . . [And] the continued development of robust and ubiquitous broadband and wireless connectivity is paramount for the growth-sector economy."); Letter from Nancy Ploeger, President, Manhattan Chamber of Commerce, to Chairman Wheeler, FCC, at 1 (Sept. 24, 2014) ("Comcast has pledged to invest hundreds of millions of dollars annually to bring any system it acquires in this transaction up to these industry-leading standards. This means that in the near future our state will benefit from a full-scale communications infrastructure upgrade at no cost to taxpayers or utility rate payers.").

<sup>8</sup> Comcast-TWC Public Interest Statement at 42-59; Israel Decl. ¶¶ 40-68, 163-166; Opposition and Response at 43-50; *see also* Remarks of Tom Wheeler, Chairman, FCC, The Facts and Future of Broadband Competition, 1776 Headquarters, at 3 (Sept. 4, 2014), *available at* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0904/DOC-329161A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf); Remarks of Tom Wheeler, Chairman, FCC, at Silicon Flatirons (Feb. 10, 2014), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-325531A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-325531A1.pdf).

<sup>9</sup> Comcast-TWC Public Interest Statement at 59-65; Opposition and Response at 50-53.



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*Internet Essentials* program eclipses by several orders of magnitude the results with similar public or private broadband adoption efforts which collectively have not been able to reach even a quarter of the households that have subscribed to *Internet Essentials*.<sup>10</sup> Low-income consumers in the acquired TWC and Charter markets will enjoy concrete, unprecedented benefits in this regard, with access to low-priced broadband service and equipment.

***Deployment of Industry-Leading Video and Voice Products and Services, and More Programming Choices.*** In transitioning the acquired systems to all-digital technology, Comcast will free up bandwidth for more VOD, more advanced IP services, and improved picture quality. As a result, customers in the acquired systems will enjoy industry-leading video and voice technologies and services, including Comcast’s Emmy-award-winning X1 platform, and a robust and ever-growing VOD library and TVE experience.<sup>11</sup> Upgrading the TWC systems will also allow Comcast to bring to the acquired markets the mix of diverse VOD and TVE content that Comcast offers in its core markets, providing more programming choices (including more diverse programming choices) that meet the needs and interests of the different communities Comcast serves across the nation.<sup>12</sup>

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<sup>10</sup> See, e.g., Press Release, Cox Communications Closes Digital Divide with Connect2Compete Broadband Adoption Program (Aug. 19, 2014), <http://cox.mediaroom.com/index.php?s=43&item=778> (reporting that 15,000 low-income families have signed after approximately two years); CenturyLink Broadband Adoption Program Semi-Annual Report, WC Docket No. 10-110 (Apr. 15, 2014), <http://apps.fcc.gov/ecfs/document/view?id=7521098352> (reporting 51,353 qualifying customers have purchased broadband under discount from Oct. 1, 2011 through Mar. 31, 2014). The Connect2Compete program, sponsored by the Commission itself, did not leave the trial phase in the few TWC areas where it was launched. In fact, Connect2Compete has never reported any signup data.

<sup>11</sup> Comcast-TWC Public Interest Statement at 67-85; Rosston/Topper Decl. ¶¶ 80-86, 93, 105-106; Opposition and Response 59-68.

<sup>12</sup> See Opposition and Response at 96-104. Crossings TV, an Asian language cable programmer, explains that it “has gained launches in Comcast markets by working with Comcast regional programming and marketing teams to build mutually beneficial marketing plans that help Comcast meet the needs of its customers in that market. . . . Comcast will almost invariably provide carriage where it is valued by its customers and positively affects its return on investment.” Tower of Babel (d/b/a/ Crossings TV) Reply Comments at 1-2. Similarly, Mnet notes that Comcast expanded distribution for the Asian-American network into six additional markets, allowing the network to reach approximately 5 million new homes. Letter from Sang H. Cho, President, Mnet America, to



*Enhanced Competition and Choice for Business Customers.* The Transaction will bring much-needed competition to the business services sector and offer a competitive alternative to incumbent local exchange carriers that have long dominated this market. Economies of scale and greater geographic reach will enable the combined company to drive fiber and other high-capacity technologies deeper into its network and to offer seamless service options at lower prices to larger businesses and enterprise customers with locations that span the combined company's footprint. And network investments and upgrades undertaken to serve larger businesses will "spill over" to the benefit of residential customers and small businesses as well.<sup>13</sup> The Transaction will also better position the company to offer wireless backhaul services to wireless carriers, spurring greater competition in that market segment.<sup>14</sup>

Since Applicants filed our Opposition and Response, dozens of *additional* supportive letters have been filed in this proceeding by businesses and business organizations praising Comcast Business offerings and highlighting the benefits this Transaction will bring to businesses of all sizes.<sup>15</sup> For example, Action Chemical, a Comcast Business customer, explains

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Chairman Wheeler, FCC, at 1 (Dec. 15, 2014). And as SomosTV, a producer and distributor of Latino-focused content, attests, "No company has been a better partner to independent and divers[e] programmers in this country than Comcast." Letter from Jose Antonio Espinal, COO, SomosTV LLC, to Chairman Wheeler, FCC, at 1 (Sept. 23, 2014).

<sup>13</sup> See Israel Decl. ¶¶ 181-186; Rosston/Topper Decl. ¶ 63; see also Opposition and Response at 72.

<sup>14</sup> Comcast-TWC Public Interest Statement at 85-100; Rosston-Topper Decl. ¶¶ 116-141; Israel Decl. ¶¶ 141-160; Opposition and Response at 68-74; Rosston/Topper Reply Decl. ¶¶ 24-28; Israel Reply Decl. ¶¶ 216-217; see also Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC, at 4-6 (Dec. 5, 2014) ("Comcast Business Services Letter") (providing concrete examples of multi-location enterprise and super-regional businesses that Comcast is not able to effectively compete for today but that it would be able to compete for post-transaction given the enhanced footprint and greater operational and cost efficiencies of the combined company). Thus, rather than "rais[ing] concerns about the quality of business service" as Mayor de Blasio contends, the Transaction will help improve the quality and cost of business services. See Letter from Mayor Bill de Blasio, City of New York, to Chairman Wheeler, FCC, at 1-2 (Oct. 29, 2014) ("Mayor de Blasio Letter").

<sup>15</sup> See, e.g., Letter from Arthur C. Campbell, President & CEO, Camden County Regional Chamber of Commerce, at 1 (Sept. 23, 2014) ("[I]t is also notable that Comcast's infrastructure investments, which have increased competition in the phone and Internet markets, have been important in expanding choices for small business owners."); Letter from Margaret Wilkinson & Casie Neitzke, Founders, Athena Global Advisors, Inc., to

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that, since switching to Comcast, the company's monthly bill has decreased by \$200.<sup>16</sup> And as

Utz Quality Foods, Inc. explains:

[W]ith an expanded footprint, more companies would be able to take advantage of the excellent suite of offerings by Comcast Business. . . . [A] combined Comcast/Time Warner Cable will be a stronger competitor in the business services market. Their wide range of scalable, high-speed services, combined with reliable connectivity and dedicated customer support, will drive competitors to improve their products and lower their prices.<sup>17</sup>

As Applicants' filings on this subject have made clear, none of this could be possible on a larger scale without the Transaction: Despite committed efforts, Applicants have faced significant and often insurmountable challenges to becoming viable competitors in this market segment, particularly for businesses with extensive and extra-regional footprints. But the geographically broader, unified offerings the Transaction will make possible will enable Applicants to win business and more meaningfully challenge the incumbents.<sup>18</sup> The significance

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Chairman Wheeler, FCC, at 1 (Sept. 19, 2014) ("It is quite apparent that this transaction will produce a stronger, more cost-efficient competitor, capable of greater investment and innovations with respect to all of its services. And Comcast's increased size and footprint will allow it to provide cutting-edge broadband and other services to more businesses and businesses with a regional reach, resulting in greater competition in the business services market."); Letter from Tamra J. Ward, President & CEO, Colorado Concern, to Chairman Wheeler, FCC, at 1 (Sept. 23, 2014) ("The merger thus will make Comcast a stronger competitor for small- and medium-sized enterprise customers, as well as for regional businesses, and thus will allow it to better challenge existing providers in the business market."); Letter from A. Richard Heffron, President, Delaware State Chamber of Commerce, to Chairman Wheeler, FCC, at 1 (Sept. 22, 2014) ("A combined Comcast/TWC would also spark competition and challenge competitors in the market by providing high quality business services. Healthy competition drives down prices, spurs innovation, and energizes the economy of our state and that of the nation.").

<sup>16</sup> Letter from Charles R. Barnes, Action Chemical, to Chairman Wheeler and Commissioners, FCC, at 1 (Sept. 23, 2014).

<sup>17</sup> Letter from J. Ed Smith, Utz Quality Foods, Inc., to Chairman Wheeler, FCC, at 1 (Sept. 22, 2014). Comcast Business was recently recognized for its stellar product offerings by the Metro Ethernet Forum, earning awards for Best Product/Service of the Year in North America, Best Application of the Year in Health, Best Application of the Year in Government, and Ethernet Industry Person of the Year. See Bill Stemper, *Comcast Business Team Shines with Four Wins at the MEF's Ethernet Excellence Awards*, Comcast Voices (Nov. 24, 2014), <http://corporate.comcast.com/comcast-voices/comcast-business-team-shines-with-four-wins-at-the-mefs-ethernet-excellence-awards>.

<sup>18</sup> See Comcast Business Services Letter; Letter from Matthew A. Brill, Latham & Watkins LLP, Counsel for TWC, to Marlene H. Dortch, FCC, (Dec. 15, 2014) (describing TWC's existing challenges for serving multi-location businesses, such as out-of-footprint construction costs and difficulties partnering with other providers) ("TWC Business Services *Ex Parte*").

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of this core, transaction-related benefit should not be underrated: As the Commission has recognized in prior transactions, “foster[ing] facilities-based competition in the enterprise market [is] a long-standing goal of the Commission.”<sup>19</sup>

***Further Development and Deployment of Next-Generation Advertising Technologies.***

The Transaction will enable the combined company to compete more effectively in the advertising marketplace and will benefit advertisers and consumers by providing the scale and scope necessary to accelerate and expand the deployment and adoption of next-generation advertising technologies like dynamic ad insertion and addressable advertising across the combined company’s expanded footprint. *All* advertisers who have commented in this proceeding are in favor of this Transaction, and more continue to voice their support. For example, BERLINE, a leading advertising, marketing, and digital communications agency, states:

[W]e are supportive of the proposed transaction due to the innovation in advertising technology that the scaled company can deliver. Even with the targeting capabilities of spot cable buying, some ad placements are still largely irrelevant to consumers who receive them. Addressable advertising will enable the deployment of advertising buys that have been placed on broad demographic characteristics in addition to geographic segmentation. These enhanced targeting capabilities will further improve the efficiency and effectiveness of our local cable spot buying. While Comcast has deployed addressable advertising in some markets, through the combined company, it will be able to deliver these strategic capabilities on a much greater scale over its larger footprint post-transaction. This will expand the pool of desired viewers and also allow for targeted buying at scale. . . . And these benefits will occur without any adverse effect on competition. I know from first-hand experience that Comcast and Time Warner Cable have discrete geographic footprints, and thus they do not currently compete for local advertisers. *If anything, with the deployment of new advertising technologies at scale to benefit local advertisers, BERLINE expects that there*

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<sup>19</sup> *Applications Filed for the Acquisition of Certain Assets of CIMCO Commc’ns, Inc. by Comcast Phone LLC, Comcast Phone of Mich., LLC and Comcast Bus. Commc’ns, LLC*, Memorandum Opinion and Order and Order on Reconsideration, 25 FCC Rcd. 3401 ¶ 4 (2010).

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*may be enhanced competition in the marketplace over the next few years, which again will ultimately benefit our advertising clients, consumers, and our agency.*<sup>20</sup>

These developments, while of most interest to advertisers, will likely benefit content providers and consumers as well by increasing incentives to make additional programming available on VOD and other platforms.<sup>21</sup>

***Other Public Interest Benefits.*** Customers in the acquired systems will also benefit from the extension of conditions and commitments from the NBCUniversal transaction, including Comcast's standalone broadband offerings and best-in-class diversity and inclusion programs, as commenters continue to note.<sup>22</sup> Supporters of the extension of *Internet Essentials* to the TWC markets, mentioned above, continue to proliferate, highlighting the substantial, concrete benefits

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<sup>20</sup> Letter from Jim Berline, Chairman, BERLINE, to Chairman Wheeler and Commissioners, FCC, at 1-2 (Oct. 7, 2014) (emphasis added); *see also* Letter from Terri Reilly, President, EchoPoint Media, to Chairman Wheeler, FCC, at 1 (Oct. 1, 2014) ("Once Comcast acquires the Time Warner Cable systems, the combined company will have the resources and capital – and the footprint – to offer enhanced addressable advertising capabilities across its entire expanded footprint, which will improve the [return on investment] for our clients' spend, and bring the kind of discrete targeting to the cable market that already exists via digital media channels."); Letter from Mary Meder, President, Harmelin Media, to Chairman Wheeler and Commissioners, FCC, at 1 (Oct. 1, 2014) ("For our company, the benefit of merging Time Warner Cable systems with Comcast's systems is that we will be able to provide our clients with a larger pool of available households with one media buy. Post-merger, we understand that the combined company will also have the scale and geographic footprint to offer addressable advertising capabilities, which will permit even more precise ad placements based on viewer demographics and other characteristics."); Letter from Brian Jost, Vice President, Media Access Group, to Chairman Wheeler, FCC, at 1 (Oct. 1, 2014) ("Through the combination of Comcast and Time Warner Cable, we will have access to a larger subscriber footprint through one buy. . . . We are also keenly interested in the combined company's enhanced capability to deploy addressable advertising technologies across a larger number of households."); Letter from Sylvia Parada, Media Buyer, Lopez Marketing Group, Inc., to Chairman Wheeler, FCC, at 1 (Sept. 30, 2014) ("With the expanded footprint of Comcast and Time Warner Cable under one combined company, spot cable buying in our market will become even more efficient. . . . [A]nd we look forward to the new targeting capabilities that Comcast Spotlight will be able to deploy post-transaction, including addressable advertising options for demographic geo-targeting of desired households that are more precise and effective than current options.").

<sup>21</sup> *See* Comcast-TWC Public Interest Statement at 100-03; Rosston/Topper Decl. ¶¶ 144-156; Opposition and Response at 75-80; Rosston/Topper Reply Decl. ¶¶ 18-22.

<sup>22</sup> *See* Comcast-TWC Public Interest Statement at 106-20; Opposition and Response at 83-105. Comcast's commitment to diversity and inclusion is well-recognized. As just one recent example, for the third consecutive year, Comcast NBCUniversal earned a 100 percent score on the Human Rights Campaign's 2015 Corporate Equality Index and was named a Best Place to work for LGBT equality. Bill Strahan, *Comcast NBCUniversal Receives Perfect Score on the 2015 Corporate Equality Index*, Comcast Voices (Nov. 21, 2014), <http://corporate.comcast.com/comcast-voices/comcast-nbcuniversal-receives-perfect-score-on-the-2015-corporate-equality-index>.

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this voluntary program does and will deliver. And the Hispanic Association on Corporate Responsibility praises the expansion of Comcast’s award-winning diversity and inclusion programs and practices more generally: “Residents of communities currently served by Time Warner Cable would see a positive benefit from the diversity practices and community engagement by Comcast including philanthropic support for initiatives that benefit the Latino community in those local and regional areas.”<sup>23</sup> Over 150 community-based organizations echo this support, and have underscored Comcast’s deep commitment and investment in the communities it serves. Comcast was recently recognized as one of the most community-minded companies in America by *The Civic 50*, and the top company in America among its communications industry peers.<sup>24</sup> And, as Applicants have previously shown, the Transaction will also expand Comcast’s leading accessibility and cybersecurity initiatives and innovations.<sup>25</sup>

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Not only are the foregoing benefits substantial, verifiable, and non-speculative, but they are also essentially un rebutted in the record. As Dr. Israel indicates:

[C]ommenters advance no serious arguments to refute the substantial efficiencies and associated consumer benefits from the transaction, as detailed in my initial declaration and the declarations by Drs. Rosston and Topper. . . . [C]ommenters leave the benefits from the transaction largely untouched, and to the extent they present any analysis of efficiencies, it is without merit.<sup>26</sup>

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<sup>23</sup> Letter from Cid D. Wilson, President & CEO, Hispanic Association on Corporate Responsibility, to Chairman Wheeler and Commissioners, FCC, at 1-2 (Aug. 25, 2014); *see also* Letter from Kathryn Wylde, President & CEO, The Partnership for New York City, to Chairman Wheeler, FCC, at 1-2 (Sept. 24, 2014) (noting that “Comcast is also prepared to extend its best-in-class diversity program to Time Warner Cable systems, covering diversity in employment, supplier diversity, programming diversity, and community investment diversity”).

<sup>24</sup> Press Release, Comcast Corp., Comcast NBCUniversal Named One of the Most Community-Minded Companies in America (Dec. 8, 2014), <http://corporate.comcast.com/news-information/news-feed/comcast-civic-50>.

<sup>25</sup> *See* Comcast-TWC Public Interest Statement at 120-26; Opposition and Response at 106-08, 111-13.

<sup>26</sup> Israel Reply Decl. ¶¶ 6, 208.

Dr. Carlton agrees, concluding that “Commenters have not refuted, or even addressed, any of the specific efficiencies that Dr. Israel and others have identified beyond vague statements that such efficiency claims are ‘speculative.’”<sup>27</sup> And Drs. Rosston and Topper concur as well, noting that:

Commenters ignore many of the clearly demonstrated benefits of the transactions and mischaracterize others, leading them to mistakenly conclude that there will not be transaction-specific benefits and that any benefits will not be passed on to customers. We show that business, residential, and advertising customers all stand to benefit from the identified transaction-specific efficiencies.<sup>28</sup>

These conclusions are undisturbed by – and indeed are reinforced by – the additional comments and other filings since September 23, which barely even address the Transaction’s many promised public interest advances. These substantial and unrebutted benefits strongly support approval of the Transaction.

**III. APPLICANTS HAVE DEMONSTRATED THAT THE TRANSACTION WILL NOT HARM COMPETITION OR THE PUBLIC INTEREST, AND NO OPPONENT PROVIDES PERSUASIVE EVIDENCE TO THE CONTRARY.**

**A. Since the Filing of Applicants’ Opposition and Response, Further Record Evidence Has Been Submitted Rebutting Claimed Harms.**

In the Opposition and Response, Applicants and our economic and engineering experts fully refuted the various alleged harms that certain parties attempt to link to the Transaction. These rebuttals relied on, among other things, marketplace data, econometric and regression analyses applying the Commission’s own methodologies and Nash bargaining model used in the *NBCUniversal Order*,<sup>29</sup> a survey of over 1,000 broadband customers, and other compelling

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<sup>27</sup> Carlton Decl. ¶ 8.

<sup>28</sup> Rosston/Topper Reply Decl. ¶ 6.

<sup>29</sup> See *Applications of Comcast Corp., Gen. Elec. Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd. 4238 ¶ 23 (2011) (“*NBCUniversal Order*”).



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evidence to show that the imagined harms advanced by certain parties are not substantiated and should be accorded no weight by the Commission.

Over the past three months, Applicants also have submitted additional record evidence and supplemental expert analyses further demonstrating the benefits of the Transaction and refuting opponents' claimed harms. Specifically:

- Applicants have submitted all narrative responses, documents, and data related to the Commission's August 21 information requests, which, among other things, provide additional evidence of the public interest benefits and efficiencies of the Transaction, as well additional information regarding Applicants' current business practices and policies at issue in this proceeding.
- Applicants have filed substantive *ex parte* notices and responses to questions from Commission staff further detailing the Transaction's specific efficiencies and benefits, including concrete examples demonstrating that Comcast will have the enhanced ability to compete against incumbent telcos and serve multi-location businesses post-transaction; the lack of harm to video programming; the combined company's lack of incentive or ability to foreclose edge providers, including OVDs; Comcast's strong commitment to expanding, not limiting, its customers' device and video choices;<sup>30</sup> and the lack of harm to the advertising marketplace.<sup>31</sup>

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<sup>30</sup> As noted above, Comcast and Roku recently announced an agreement whereby Comcast customers can access the HBO Go and Showtime Anytime TVE apps on their Roku devices. See Matt Strauss, *HBO Go & Showtime Anytime on Roku Players and Roku TV: Now Available for Xfinity TV Customers*, Comcast Voices (Dec. 16, 2014), <http://corporate.comcast.com/comcast-voices/hbo-go-showtime-anytime-on-roku-players-and-roku-tv-now-available-for-xfinity-tv-customers>; see also Letter from Jonathan Kanter, Cadwalader Wickersham & Taft LLP, Counsel for Roku, to Marlene H. Dortch, FCC, GN Docket No. 14-28 & MB Docket No. 14-57 (Dec. 15, 2014).

<sup>31</sup> See Comcast Business Services Letter, *supra* note 14; TWC Business Services *Ex Parte*, *supra* note 18 (discussing TWC's business services and the pro-competitive impact the Transaction will have on the market segment); Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Nov. 26, 2014) ("Nov. 26 Responses") (providing narrative responses to six questions from Commission staff on a range of issues, including the efficiencies and benefits of the Transaction, Comcast's lack of incentive or ability to harm other MVPDs and OVDs, and rebutting programming-related and device-related concerns); Letter from Matthew A. Brill, Latham & Watkins LLP, Counsel for TWC, to Marlene H. Dortch, FCC (Nov. 26, 2014) (discussing TWC's Internet traffic-exchange policies and its arrangements with other network providers); Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Nov. 25, 2014) (providing further detail regarding the many ways in which edge providers and CDNs can and do deliver traffic to Comcast's network); Letter from Matthew A. Brill, Latham & Watkins, Counsel for TWC, to Marlene H. Dortch, FCC (Nov. 18, 2014) (discussing issues related to TWC's relationships with third-party streaming service providers and device manufacturers); Letter from Matthew A. Brill, Latham & Watkins LLP, Counsel for TWC, to Marlene H. Dortch, FCC (Nov. 17, 2014) (discussing TWC's agreements and related negotiations for carriage of video programming on TWC's systems); Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Nov. 3, 2014) (discussing the many options edge providers and CDNs can use to deliver traffic to Comcast's network, even without a direct relationship with Comcast); Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Oct. 27, 2014) (discussing Comcast's X1 platform, support for

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- In response to Commission staff questions, Dr. Israel and Compass Lexecon prepared additional expert analysis responding to alternative theories of OVD foreclosure, explaining why these hypotheticals do not change Dr. Israel’s and Dr. Carlton’s conclusion that Comcast lacks the incentive or ability to engage in such foreclosure.<sup>32</sup>
- And Cornerstone Research has provided additional analysis explaining that whatever programming cost savings may result from the Transaction likely would be passed through to customers, in full or in part.<sup>33</sup>

These additional submissions add to the already robust evidentiary record in this proceeding confirming that the Transaction will serve the public interest and will not result in any harms. In the sections below, Applicants respond briefly to each of the formal comments filed on September 23, 2014, to those opponents who submitted early-filed reply comments, and to certain other *ex parte* submissions or public criticisms that raise – or at least purport to raise – new issues.<sup>34</sup>

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retail devices, and authentication services for various program networks on different device platforms); Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Oct. 16, 2014) (discussing issues related to the negotiations for and carriage of programming on Comcast Cable systems); Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Oct. 16, 2014) (discussing issues related to local cable advertising).

<sup>32</sup> See Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, FCC (Dec. 3, 2014). In addition, Compass Lexecon provided additional economic analysis in response to requests from Commission staff regarding interconnection fees, broadband prices, Customer Lifetime Value (“CLV”) calculations, and Comcast’s interconnection capacity and utilization rates. See Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, FCC, (Dec. 2, 2014) (interconnection regression analysis); Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, FCC (Dec. 3, 2014) (broadband prices and CLV analysis); Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, FCC (Dec. 8, 2014) (interconnection capacity and utilization rates analysis).

<sup>33</sup> Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, FCC (Dec. 8, 2014).

<sup>34</sup> Comcast does not further respond to Spot On Networks, LLC (“Spot On”), which simply repeats its baseless proposed condition that Comcast should be subject to a wholesale access requirement for third-party Wi-Fi services, and offers no new support for its argument. See Spot On Response at 2. Applicants have already addressed and rebutted Spot On’s claims and proposals, which are meritless. See Opposition and Response at 311-13 (responding to proposals of various commenters for wholesale access conditions); see *id.* at 312 n.997 (specifically responding to Spot On’s claims and proposals). However, Comcast takes this opportunity to clarify and amend its description in the Opposition and Response of the dispute between Comcast and Spot On in April 2013. As an initial matter, Comcast notes that there is no ongoing legal dispute with Spot On. Spot On purchases commercial broadband service from Comcast for the purpose of making broadband Internet access available solely to the common areas of multiple dwelling units (“MDUs”) with which Spot On has contracted, and Comcast is not aware of any pending issues under its agreements with Spot On. As for the prior dispute, which Comcast described as pertaining to “reselling,” it more accurately concerned Spot On’s operating its Wi-Fi service in certain MDUs in a



**B. Parties Who Filed Formal Comments on September 23 Opposing the Transaction Have Submitted No Evidence of Harm.**

The set of formal comments filed on September 23, 2014 in opposition to the Transaction does nothing to change the conclusion that the record lacks any credible theory of harms that would be caused by the Transaction.<sup>35</sup> Rather, these filings either repeat arguments raised in the prior round of comments and petitions that our Opposition and Response has already refuted, or raise extraneous issues that are outside the scope of this proceeding or that are otherwise unsupported. Applicants address these comments in turn below. In addition and as noted above, for ease of reference, Applicants provide a comprehensive chart (attached hereto as **Exhibit A**) that contains a list of all key issues raised by opponents (including the petitions to deny and comments filed in August, as well as subsequent filings), a summary of the affirmative and responsive case presented by Applicants on each topic, and a ready guide to the location of the key analyses and facts in the record that Applicants have presented on each issue.

**1. Response to TVC United States Inc.**

TVC United States Inc. (“TVC”) filed an untimely petition to deny on September 23, 2014 that is largely identical to the petition to deny it filed on August 25, 2014.<sup>36</sup> Applicants have already fully rebutted TVC’s and others’ generalized and unsupported claims that Comcast has not demonstrated a commitment to serving Hispanic Americans, and that the Transaction will increase Comcast’s incentive and ability to harm programming targeted to Hispanic Americans. As the Applicants demonstrated in the Opposition and Response, neither claim has

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manner that made the Wi-Fi signal – and thus also broadband Internet access – available beyond the MDU common areas (i.e., in individual residences) in violation of Comcast’s “Acceptable Use Policy.”

<sup>35</sup> Responses were filed on or before September 23, 2014.

<sup>36</sup> See TVC United States, Inc. Petition to Deny.

any validity.<sup>37</sup> To the contrary, Comcast offers numerous programming options geared toward the Hispanic/Latino community and will deliver this same commitment to diverse programming choices to customers in the acquired systems. And there is broad support in the record from Hispanic programmers, organizations, and government officials.<sup>38</sup> For example, as the CEO of V-me recently put it, “I without hesitation express my strong view that Comcast understands the importance of independent programmers in the Hispanic media sector and has been a vital partner in enabling V-me to grow its position in providing independent, quality Spanish-language programming for our Hispanic viewers.”<sup>39</sup> Comcast thus does not further respond to this unsupported and fully rebutted claim.<sup>40</sup>

With respect to TVC’s new point that Comcast has declined to carry the channel,<sup>41</sup> TVC’s arguments suffer from the same flaw that undermines other programmers’ self-serving complaints in this proceeding (e.g., RFD-TV, TheBlaze, Back9, and others): whether or not

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<sup>37</sup> See Opposition and Response at 262-65; *see id.* at 265 & n.831 (specifically answering TVC).

<sup>38</sup> See Opposition and Response at 8-12; *see also* Letter from Amy L. Hinojosa, President and CEO, MANA, A National Latina Organization, to Chairman Wheeler and Commissioners, FCC, at 2 (Aug. 22, 2014) (“[T]his merger will enhance the multi-tiered approach Comcast has already taken with regards to facilitating access for and educating Hispanic communities.”); Letter from Dr. Juan Andrade, Jr., President, United States Hispanic Leadership Institute, to Chairman Wheeler, FCC, at 1 (Aug. 25, 2014) (“We support approval of the proposed Comcast and Time Warner Cable transaction, which will help expand this community-minded company’s commitment to all Americans.”); Letter from Jose Antonio Espinal, SomosTV LLC, to Chairman Wheeler, FCC, at 1 (Sept. 23, 2014) (“[T]he combination of Comcast and TWC does not appear to do anything but offer [Hispanic programmers] like SomosTV opportunities to grow as Comcast’s partners.”); Letter from Luis Torres-Bohl, Castalia Communications, to Chairman Wheeler, FCC, at 1 (Sept. 24, 2014) (“Comcast continues to play an instrumental role in increasing access to content owned by and targeted toward Hispanics. The company has had, and continues to refine, an industry-leading plan to reach the Hispanic audience.”).

<sup>39</sup> Letter from Eligio Cedenio, CEO, V-me Media, Inc., to Marlene H. Dortch, FCC, at 2 (Dec. 15, 2014).

<sup>40</sup> In fact, Comcast carries dozens of networks geared towards the Hispanic/Latino community, has expanded the carriage of seven Hispanic programming services (by more than 14 million customers) since 2011, and has promoted diverse networks on various platforms. *See* Opposition and Response at 96-100; *see also id.* at 160-61 & n.499 (noting Comcast will be incentivized by the Transaction to serve diverse populations even more effectively); *id.* at 262-65 (explaining that there is no credible claim that any of Comcast’s carriage decisions have been tainted by its ownership of Telemundo or mun2).

<sup>41</sup> TVC Petition to Deny at 5. TVC also sprinkles in additional aspersions about certain Hispanic/Latino-oriented networks Comcast carries that do not merit a response.

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Comcast carries a particular network today is simply not a valid *transaction-specific* concern. Nevertheless, for the record, Comcast notes that it evaluated TVC in September 2013 and decided at that time not to carry the network because (1) Comcast already carries a significant amount of higher-quality programming that originates in Mexico;<sup>42</sup> (2) TVC's programming has little following, which is likely why no other major MVPD carries the network's non-broadcast feed; and (3) in light of both these concerns, it made little sense to devote limited bandwidth resources to TVC's programming at that time. Comcast understands that TVC has pursued distribution by offering its programming to local Spanish-language broadcast stations' multicast feeds, with limited success to date. Comcast will determine whether to carry such multicast feeds in local markets depending on its arrangements with the broadcast stations or station groups at issue.<sup>43</sup>

### 2. Response to American Community Television et al.

The joint comments of American Community Television ("ACT") and the Southeast Association of Telecommunications Officers and Advisors ("SEATOA"), and the late-filed comments of the States of California and Nevada Chapter of NATOA (together with ACT and SEATOA, the "PEG Commenters"),<sup>44</sup> focus their arguments and proposals on public, educational, and governmental ("PEG") programming issues that have nothing to do with this

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<sup>42</sup> In its major systems, Comcast carries 15 Spanish-language networks that are originated in Mexico or programmed mostly with Mexican-sourced content.

<sup>43</sup> For a time, Comcast carried an LPTV station in Chicago (W25DW) that featured some TVC programming through a leasing arrangement with a third-party programmer. The LPTV station and the third-party programmer had a business dispute earlier this year that resulted in the TVC programming on the LPTV station being replaced by infomercials. During the period in which Comcast notified the third-party programmer and the LPTV station that it would cease carrying the infomercial service at the conclusion of the November sweeps period, TVC, unbeknownst to Comcast, began providing TVC national programming to Comcast via the third-party programmer's fiber feed. Comcast has ceased carrying the service.

<sup>44</sup> American Community Television and Southeast Association of Telecommunications Officers and Advisors Reply Comments at 2-5; States of California and Nevada Chapter of NATOA Comments at 1-2.

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Transaction, and that Applicants already addressed in the Opposition and Response in any event.<sup>45</sup> In short, the PEG Commenters offer nothing more than a litany of proposed conditions that go well beyond any of the statutory PEG requirements imposed on cable operators, despite the fact that nothing in their comments supports those asks.<sup>46</sup>

Moreover, the record shows that Comcast, the largest distributor of PEG access programming in the country, provides substantial resources and support for PEG programming and is committed to exploring how local programming, including PEG, adds value to its customers and local government partners.<sup>47</sup> In fact, as Applicants have noted, to the extent that this Transaction has any effect on PEG programming or programmers, it will be a *beneficial* one. Specifically, the Transaction will extend Comcast’s PEG commitments from the NBCUniversal transaction to the acquired systems.<sup>48</sup> Accordingly, the Commission should reject the PEG Commenters’ arguments and proposed conditions.

### 3. Response to Telecommunications Association of Maine

The Telecommunications Association of Maine (“TAM”), whose members include the Maine Rural Local Exchange Carriers (“Maine RLECs”), asks the Commission to require

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<sup>45</sup> See Opposition and Response at 294-300.

<sup>46</sup> Indeed, as Applicants have explained, these PEG-related proposals have nothing to do with the Transaction at all. The comments instead reflect PEG advocates’ wish lists as they confront the rapidly evolving video marketplace that is seeing an increasing migration of viewers to over-the-top services and other non-cable platforms, and the advent of state franchising legislation. See *id.* at 295-96. And many of the proposals are contained in pending national legislation introduced with the support of the very organizations that have filed here. See *id.* at 296.

<sup>47</sup> *Id.* at 296-99. PEG operators like C-NET value these efforts: “Comcast understands that PEG TV connects individual viewers to important information like the proceedings of local government, school board meetings, local sports and concerts, public issues forums and the important work of local non-profits. . . . Comcast is a leader among video providers in working with communities to make that marketplace even more vibrant.” Letter from Cynthia Hahn, Executive Director, C-NET, to Chairman Wheeler, FCC, at 1 (Sept. 18, 2014).

<sup>48</sup> Opposition and Response at 300. Those conditions prevent Comcast from migrating PEG channels to digital delivery in systems that are not yet all digital; require Comcast to carry PEG channels on the digital starter tier or an equivalent tier that reaches at least 85 percent of subscribers; and obligate Comcast to ensure that there is no material degradation in the delivery of PEG channels. See *id.*

Comcast to offer collocation at its headends and to treat Title VI video service as an unbundled network element subject to TELRIC pricing.<sup>49</sup> TAM’s assertions that the distribution of video programming to consumers is a “telecommunications service” and that the “interrelatedness” of voice, video, and data services justifies subjecting the combined company’s cable service to common carrier regulation are in clear contravention of the Communications Act and should be rejected.<sup>50</sup> Moreover, to the extent TAM requests in the alternative that the Commission deny the Transaction for the reasons set forth in the Maine RLECs’ Petition to Deny, Applicants have already responded to the Maine RLECs’ specious arguments,<sup>51</sup> which, as Applicants noted, the Maine Public Utilities Commission previously rejected as well.<sup>52</sup> Not only are these arguments without any basis in law or fact, but they simply have no nexus to this deal. And TAM makes no attempt to show otherwise.

#### **4. Response to Michigan Public Service Commission**

The Michigan Public Service Commission (“MPSC”) asks the Commission to address MPSC’s concerns regarding customer service standards, cable rates, and cable service quality

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<sup>49</sup> Telecommunications Association of Maine Reply Comments at 2-3.

<sup>50</sup> See 47 U.S.C. § 544(f) (providing that “[a]ny Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services” except as expressly provided in Title VI of the Communications Act); 47 U.S.C. § 541(c) (providing that “[a]ny cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service”); see also 47 U.S.C. § 522(6) (defining “cable service” to include “video programming”); *Inquiry Concerning High-Speed Access to Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd. 4798 ¶ 61 (2002) (“The legislative history indicates that Congress intended the cable service definition ‘to mark the boundary between those services provided over a cable system which would be exempted from common carrier regulation under section 621(c) and all other communications services that could be provided over a cable system.’ Thus, the definition reflected the traditional view that the one-way delivery of television programs, movies, and sporting events is not a traditional common carrier activity and should not be regulated as such.”); *Inquiry Concerning High-Speed Access to Internet*, Notice of Inquiry, 15 FCC Rcd. 19287 ¶ 16 n.31 (2000) (“We note that, in amending the definition of cable service in 1996, Congress stated that it did not intend to eliminate the longstanding regulatory distinction between telecommunications service and cable service.”).

<sup>51</sup> See Opposition and Response at 191-92.

<sup>52</sup> See *id.* at 192.

and to impose conditions on the Commission's approval.<sup>53</sup> MPSC's concerns, however, are non-transaction-specific and are otherwise without any factual support or foundation and, therefore, should be rejected.

***Customer Service/Quality of Service.*** MPSC asks the Commission to take steps to ensure that the quality of the services provided to customers and Applicants' customer service levels will not be degraded if the Transaction is approved.<sup>54</sup> While it is enough to say that this request and the surrounding statements raise no transaction-specific issues or concerns whatsoever, Comcast has stressed publicly and in this proceeding, and reiterates again here, its firm commitment to improving the customer experience. The Transaction will only help accomplish – not hurt – that goal.<sup>55</sup> The substantial investments Comcast will make in upgrading TWC's systems will improve network reliability, significantly reduce the trouble calls rate that TWC has previously experienced, and allow Comcast to roll out innovative services such as self-install kits across the combined company's footprint.<sup>56</sup>

Still, Comcast recognizes that it needs to improve more – and more quickly – to meet customers' expectations. As Brian Roberts recently noted:

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<sup>53</sup> MPSC Reply Comments at 2.

<sup>54</sup> *Id.* at 4.

<sup>55</sup> Despite claims by some opponents that greater size leads to worse customer service, as Applicants noted in our Opposition and Response, economic analysis that purports to show an inverse relationship between cable company size and customer satisfaction is deeply flawed. *See* Opposition and Response at 283-86. Moreover, headlines about customer service provided by cable companies are often overstated and are in tension with actual data. *See* Adams Nager, *How to Misuse American Customer Satisfaction Index Data to Try to Block a Merger*, ITIF Innovation Files (Mar. 24, 2014), <http://www.innovationfiles.org/how-to-misuse-american-customer-satisfaction-index-data-to-try-to-block-a-merger/> (“Providing reliable, high-quality Internet and television services across a national network is much more difficult than taking a hamburger order or shipping products bought online. When things go wrong, people notice immediately that their computers and TV stopped working and blame providers, even when fault lies elsewhere . . . . Where a lot can go wrong, much of it beyond the control of the provider, it's tough to keep customers happy.”); *see also id.* (noting that the three industries with the lowest ACSI rankings are pay-tv providers, Internet providers, and airlines).

<sup>56</sup> Opposition and Response at 285 n.911.

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Over the last few years, we've been incredibly focused on product innovation and delivering great content and technology experiences. So now it's time to leverage those capabilities to deliver truly exceptional customer service. The way we interact with our customers on the phone, online, in their homes is just as important to our success as the products that we provide. Put simply, customer service should be our best product.<sup>57</sup>

That is why Comcast has been making significant investments to improve customer service and has appointed industry veteran and X1 developer Charlie Herrin to the position of Comcast Senior Vice President, Customer Experience, who is working to revamp Comcast's end-to-end customer service operations.<sup>58</sup>

In addition, Comcast recently announced customer service initiatives that will improve the customer experience. First, Comcast has teamed up with The UPS Store to offer convenient and free equipment returns at more than 4,400 UPS Store locations nationwide. Comcast customers can drop off equipment as-is, without wrapping or a box.<sup>59</sup> Second, Comcast has begun trialing one of the latest customer service innovations, which enables customers to track Comcast technicians' arrival in real time through the My Account app.<sup>60</sup> These new initiatives are just two examples of the work Comcast is doing to rethink every aspect of the customer

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<sup>57</sup> Brian Roberts, Chairman and CEO, Comcast Corp., Q3 2014 Earnings Call, Tr. at 4 (Oct. 23, 2014), available at [http://cmcsk.com/common/download/download.cfm?companyid=CMCSA&fileid=788306&filekey=8a402ff8-f104-476e-8385-9c7002ac4d3b&filename=Comcast\\_3Q14\\_Earnings\\_Transcript.pdf](http://cmcsk.com/common/download/download.cfm?companyid=CMCSA&fileid=788306&filekey=8a402ff8-f104-476e-8385-9c7002ac4d3b&filename=Comcast_3Q14_Earnings_Transcript.pdf).

<sup>58</sup> Neil Smit, *Reimagining the Customer Experience*, Comcast Voices (Sept. 26, 2014), <http://corporate.comcast.com/comcast-voices/our-new-head-of-customer-experience>; Lauren Hertzler, *Comcast Hopes New Exec Will Boost Customer Experience*, Phila. Bus. J. (Sept. 30, 2014), available at [http://www.bizjournals.com/philadelphia/news/2014/09/30/comcast-hopes-new-exec-will-boost-customer.html?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+vertical\\_46+\(Software+Industry+News\)](http://www.bizjournals.com/philadelphia/news/2014/09/30/comcast-hopes-new-exec-will-boost-customer.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+vertical_46+(Software+Industry+News)) (“Herrin’s goal is to figure out what needs to be done to make Comcast Cable customers’ lives better. It’s something Herrin is dedicated to, [Comcast Cable President and CEO Neil] Smit said in a statement. That passion showed when Herrin led the company’s design team behind the development of the X1 user interface.”).

<sup>59</sup> Press Release, Comcast Corp., Walk In. Drop Off. That’s It. (Oct. 30, 2014), <http://corporate.comcast.com/news-information/news-feed/comcast-ups>.

<sup>60</sup> Charlie Herrin, *Your Time Is Valuable; We Don’t Want to Waste It*, Comcast Voices (Nov. 20, 2014), <http://corporate.comcast.com/comcast-voices/my-account-app-technician>.



experience, and the Transaction will extend these innovations to the acquired systems, to the benefit of millions of cable, broadband, and voice customers.

**Pricing.** MPSC repeats conclusory claims about cable prices for video, voice, and broadband services that are not specific to Applicants, much less to the Transaction.<sup>61</sup> As Applicants and other commenters have shown,<sup>62</sup> the Transaction will have “no tendency to affect consumer prices” because it will not reduce consumer choice in any relevant market.<sup>63</sup> Drs. Rosston and Topper underscore this conclusion, explaining that their “analysis of empirical data finds no evidence of any significant price effect from vertical integration.”<sup>64</sup> Moreover, they conclude that to the extent the increased scale of the combined company helps to reduce its programming or other costs, such efficiencies will ultimately redound to the benefit of consumers in various ways, including the possibility of lower prices or slower increases in future prices.<sup>65</sup>

Despite certain parties’ general complaints about consumer prices, Applicants have continuously offered customers more for their money (e.g., more HD, VOD, and TVE programming), thereby enhancing the value proposition of these services. Even in the face of exponential increases in programming costs, Comcast has done its best to control prices for the

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<sup>61</sup> See MPSC Reply Comments at 3-4.

<sup>62</sup> See Comcast-TWC Public Interest Statement at 138; Opposition and Response at 289-94.

<sup>63</sup> C. Scott Hemphill Comments at 3 (emphasis added); see also Reply Comments of Holtz-Eakin and Rinehart at 3 (“As the FCC noted, expanded basic service has grown nearly 5.9 percent over an 18 year period, with the price per channel declining by 0.3 percent annually. Contrast this to the general inflation rate which grew annually at 2.4 percent over the 18 years. The expansion of service has corresponded to a large drop in the collective power of cable companies, which have stake in just 15 percent of the video content.”).

<sup>64</sup> Rosston/Topper Reply Decl. ¶ 182.

<sup>65</sup> *Id.* ¶ 47 (“Over time, part or all of the savings in Comcast’s programming costs, which constitute the largest share of Comcast’s marginal cost of serving an MVPD customer, would be passed through to Comcast’s customers in the form of slower growth in their subscription fees, or through greater investments in service, expanded program offerings, or other non-price alternatives, relative to what consumers might pay without the transaction, implying an increase in consumer welfare.”).



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benefit of its customers. While Comcast's programming costs (which are the single largest component of Comcast's cost base) increased by over 120 percent from 2004 through 2013, Comcast's prices to customers rose at about *half* that rate during the same time period. In addition, nearly 50 percent of Comcast's customers take advantage of promotional or multi-product discounts, neither of which are factored into price surveys (which are based solely on rate cards for individual levels of service). And the Commission's pricing data show that across the industry the price per channel of expanded basic (the most popular tier among consumers) actually *decreased* by 0.3 percent per year from 1995 to 2013, while the CPI rose 2.4 percent per year during that same period.<sup>66</sup> The most recent Cable Prices Report also indicates that there is virtually no change in price per channel on an average annual compound basis.<sup>67</sup>

Similarly, Comcast has increased Internet speeds 13 times in 12 years across its entire footprint, and when broadband prices are adjusted for the large increases in broadband quality that have occurred over the past seven years, the data show that real quality-adjusted prices have decreased substantially in this time frame. For example, the quality-adjusted price of Comcast's most popular Performance and Blast tiers have decreased by 74 percent and 83 percent, respectively. And the weighted-average real broadband price per Megabit has declined by 76 percent. As Compass Lexecon concluded, these substantial decreases in quality-adjusted prices "demonstrat[e] that technological advances and competitive pressures have led Comcast to deliver substantially more value, in the form of lower quality-adjusted prices, over time."<sup>68</sup>

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<sup>66</sup> Opposition and Response at 293.

<sup>67</sup> See *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, MM Docket No. 92-266, DA 14-1829, ¶ 3 (MB 2014).

<sup>68</sup> Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, FCC, Enclosure at 1-5 (Dec. 3, 2014); see also Opposition and Response at 293-94.

Furthermore, to the extent that MPSC asks the Commission to impose rate caps or rate regulation in areas that have been found to be subject to effective competition or that are subject to the jurisdiction of local franchising authorities rather than the Commission, those proposals are simply incompatible with the Communications Act and the Commission's rules and should be rejected.<sup>69</sup>

Finally, MPSC asks the Commission to impose conditions to ensure that the Transaction does not adversely affect competition through its creation of a new cable operator with a larger footprint in Michigan that offers services and rates at a level that DBS and IP video providers cannot match. Under any analysis, the potential for higher quality services and lower customer rates is a *benefit*, not a harm, and thus *supports* approval of the Transaction, not the imposition of conditions on it.

## 5. Response to Non-NBCUniversal Affiliates

The ABC Television Affiliates Association, CBS Television Network Affiliates, and the Fox Television Affiliates Association (collectively, the "Affiliate Associations") do not oppose the Transaction, but propose that, in approving the deal, the Commission prohibit Comcast from negotiating retransmission consent arrangements for local broadcast station signals on behalf of Bright House Networks ("Bright House") or other non-commonly-owned or controlled MVPDs in the local markets where Comcast will have a presence post-transaction.<sup>70</sup> As a factual, policy,

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<sup>69</sup> See Opposition and Response at 289 n.921. Further, to the extent MPSC is asking the Commission to impose rate regulations on some of Comcast's equipment or basic tier services, those proposals also contravene the statute, which places the jurisdiction for regulating those items with the local franchising authority. See 47 U.S.C. § 543(a)(2)(A); see also 47 U.S.C. § 543(a)(1) ("No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 532."); *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd. 5631 ¶¶ 16, 51, 54 (1993).

<sup>70</sup> Affiliate Associations Comments at 3-4, 7-16.

and economic matter, there is no reason for the Commission to prohibit such arrangements or to adopt this proposed condition.

It bears noting that, in connection with the NBCUniversal transaction, Comcast and the Affiliate Associations reached an agreement to provide certain protections to the non-NBC affiliate stations, particularly with respect to negotiation of retransmission consent agreements with Comcast.<sup>71</sup> That agreement, which was incorporated as a condition into the *NBCUniversal Order*, has worked well to protect the Affiliate Associations' interests over the nearly four years since the NBCUniversal transaction, and Comcast has complied with it fully. As the Affiliate Associations' comments indicate, Comcast and the Affiliate Associations have again engaged in good-faith, constructive discussions to fashion a supplemental agreement to address the company's relationship with the Affiliate Associations following the instant Transaction and have agreed on all but the one issue they raise in their comments.<sup>72</sup>

Specifically, the Affiliate Associations are concerned about Comcast assuming TWC's role in providing programming-buying services to Bright House.<sup>73</sup> The Affiliate Associations contend that, if Comcast negotiates retransmission consent agreements on behalf of Bright House in local markets that they both serve, Comcast's "increased size and expanded local presence"

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<sup>71</sup> See *NBCUniversal Order*, App. F.

<sup>72</sup> Comcast understands that the Affiliate Associations are submitting this agreement into the record of this proceeding.

<sup>73</sup> Affiliate Associations Comments at 10. The Affiliate Associations also raise the entirely speculative concern that Comcast could somehow negotiate retransmission consent arrangements not only jointly with other cable operators, but also jointly with or on behalf of DBS and telco MVPDs. *Id.* However, apart from the fact that this concern is purely speculative and hypothetical, the only joint negotiation involved in this Transaction is the one involving Bright House. Even if this concern were valid, which it is not, there is no basis to conclude that the Transaction increases Comcast's or other MVPDs' incentive or ability to enter into such arrangements. And as explained in the Opposition and Response, such groundless speculation may not form the proper basis for denying or imposing conditions on the license transfers. See Opposition and Response at 32-36.

will increase the risk that it may “discriminate against and competitively disadvantage local television broadcasters . . . in retransmission consent negotiations.”<sup>74</sup>

This concern is misplaced. As an initial matter, the Affiliate Associations identify two DMAs where the attribution of Bright House systems to Comcast raises concerns in their view – Tampa and Indianapolis – and they assert that Comcast and Bright House together will constitute 72 percent of the “cable market” in Tampa and 76.5 percent in Indianapolis.<sup>75</sup> But these numbers are irrelevant because, as discussed below, the Transaction does not change the number of competitive choices in those markets or elsewhere. These numbers are also not accurate. The proper competitive analysis for local broadcast program buying involves (at a minimum) MVPD providers, not “cable” providers only.<sup>76</sup> And each of these markets features robust MVPD competition, with DBS and telco competitors having significant (and growing) shares.

According to SNL Kagan, Bright House today has a [[ ]] percent share of MVPD subscribers in the Tampa-St. Petersburg (Sarasota) DMA (down from [[ ]] percent four years ago), and Comcast has a [[ ]] percent share (down from [[ ]] percent four years ago).<sup>77</sup> Together, that constitutes a [[ ]] percent share, not 72 percent – an amount in line with Comcast’s share in certain other DMAs in which Comcast operates today without *any* problems or concerns in the negotiation of retransmission consent. And, in the Indianapolis DMA, Comcast currently only has a [[ ]] percent share of MVPD subscribers while Bright House has a [[ ]] percent share, totaling a combined share of [[ ]] percent, not 76.5 percent, as the Affiliate Associations

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<sup>74</sup> Affiliate Associations Comments at 4; *see also id.* at 10-11.

<sup>75</sup> *Id.* at 8.

<sup>76</sup> The competitive universe for the distribution of broadcast programming is likely larger than just MVPDs. And broadcast programming is, of course, also available over-the-air.

<sup>77</sup> SNL Kagan, U.S. Multichannel Operator Subscriber Growth by Market. Comparisons are between Q2 2014 and Q2 2010.

claim. But in all events, Comcast is *divesting* systems in the Indianapolis DMA in connection with the Divestiture Transactions, and Comcast will have no role in buying programming for GreatLand, so Comcast would be negotiating only for Bright House, with its limited share in that DMA.<sup>78</sup>

Even apart from these inaccurate calculations, there is no basis in competition law generally or in the Commission's precedent to conclude that the Bright House program-buying arrangement presents competitive concerns. As a matter of economics, there is no reason to conclude that Comcast negotiating retransmission consent for Bright House raises any competitive concerns for broadcasters either nationally (as shown in Applicants' Opposition and Response)<sup>79</sup> or in any particular local market. Stations affiliated with major broadcast networks are in a strong bargaining position today, and Comcast's desire not to be without local broadcast programming is evidenced by the fact that it has never lost a major broadcast network signal due to a retransmission consent dispute. As Drs. Rosston and Topper have explained, the fact that Comcast will have a somewhat larger distribution simply raises the stakes for both sides of failing to come to mutually acceptable terms in a programming negotiation – it does not increase Comcast's bargaining leverage, and it will not result in non-competitive pricing terms.<sup>80</sup> Indeed, the Affiliate Associations do not provide any compelling explanation for their theory that Comcast's stepping into TWC's shoes in these markets would somehow distort retransmission

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<sup>78</sup> See Letter from Kathryn A. Zachem, Comcast, Steven Teplitz, TWC, to Marlene H. Dortch, FCC, Attach. 1 (June 5, 2014) (providing list of DMAs involved in the Divestiture Transactions). SpinCo is now known as Midwest Cable. Midwest Cable's name will be changed to GreatLand Connections, Inc. when the Transaction closes.

<sup>79</sup> See Opposition and Response at 167.

<sup>80</sup> Rosston/Topper Decl. ¶¶ 190-192; see also Rosston/Topper Reply Decl. ¶ 53.

consent negotiations. (Notably, Sinclair Broadcasting acknowledged that its negotiations with Comcast have been much less contentious than with other MVPDs.)<sup>81</sup>

Furthermore, the Affiliate Associations mix apples and oranges in asserting that the logic of the Commission’s recent prohibition of in-market joint sales arrangements by Big Four affiliate stations requires the Commission to likewise prohibit Comcast from negotiating retransmission consent purchasing arrangements on behalf of Bright House. As an initial matter, the Commission already considered this reciprocal prohibition and specifically decided *not* to impose it as an industry-wide matter, in part because the broadcast commenters had not established any competitive harms.<sup>82</sup> Nor do the Affiliate Associations’ comments make that showing here; instead, they simply assert that the “Commission’s pro-competitive rationale [in the *Joint Negotiation Order*] warrants every effort to place the parties on equal footing.”<sup>83</sup>

But the analogy breaks down as a matter of law and policy. The central goal in the Commission’s *Joint Negotiation Order* quoted by the Affiliate Associations – to “prohibit arrangements *among competitors* that *eliminate competition among them* and thereby generate *supra-competitive* retransmission consent fees”<sup>84</sup> – on its face does not apply to the TWC-Bright House arrangement that Comcast would be assuming, or, in fact, to other such arrangements between cable operators in adjacent services areas. Unlike two broadcast stations that serve the

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<sup>81</sup> See Opposition and Response at 267; see also Sinclair Petition to Deny at 4-5.

<sup>82</sup> See *Amendment of the Commission’s Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 3351 ¶ 33 (2014) (“*Joint Negotiation Order*”) (“[A]lthough some commenters have provided anecdotal evidence of joint negotiation by MVPDs, the record does not establish that this is a widespread practice or the extent to which such joint negotiation affects retransmission consent fees obtained by broadcasters.”). Moreover, the broadcast commenters in that industry-wide proceeding expressly raised the TWC and Bright House program buying arrangement, and the Commission was not persuaded that this was a concern. See *id.* ¶ 33 n.120 (citing NAB comments stating that Time Warner Cable “routinely” negotiates retransmission consent jointly on behalf of itself and Bright House Networks).

<sup>83</sup> Affiliate Associations Comments at 15.

<sup>84</sup> *Id.* (citing and quoting *Joint Negotiation Order* ¶ 20) (emphasis added).

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same geographic areas, TWC and Bright House are not competitors (apart from minimal overlaps); therefore, the programming buying arrangement does not eliminate competition between them; and the arrangement does not now and will not post-transaction result in supra-competitive retransmission consent prices. Stated another way, the competition laws generally look askance at agreements on price among *competitors*, and accordingly there is a decisive difference between joint negotiations involving non-competing cable companies, on the one hand, and joint negotiations involving broadcast stations that are head-to-head competitors in a DMA, on the other.<sup>85</sup>

Moreover, Comcast and Bright House are *purchasers*, not *sellers*, of programming (as opposed to competing broadcast stations in a single market who are *sellers* of advertising and programming). The antitrust laws have long recognized that joint purchasing arrangements – as opposed to joint sales by competitors – are generally not anticompetitive and may be procompetitive.<sup>86</sup> In concert with this core principle, the Commission has specifically approved joint MVPD buying groups and accords them various protections under the program access rules and the *NBCUniversal* conditions.<sup>87</sup>

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<sup>85</sup> The fact that the Commission has, in a proceeding of general applicability, already addressed and denied the precise proposal advanced by Affiliate Associations here, further highlights the fact that this proposal is not transaction-specific and should be rejected for that reason as well. Indeed, nothing about the Transaction, and nothing included in the Affiliate Associations' comments, justify a condition on this issue being applied solely to Comcast, especially since the Commission's *Joint Negotiation Order* made clear that such a prohibition on joint MVPD negotiations was not warranted or justified.

<sup>86</sup> See, e.g., FTC and U.S. Dep't of Justice, Antitrust Guidelines for Collaborations Among Competitors § 3.31(a) (2000), [http://www.ftc.gov/sites/default/files/documents/public\\_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf](http://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf) (explaining that joint purchasing arrangements, even as between direct competitors, usually “do not raise antitrust concerns and indeed may be procompetitive,” because they “enable participants to centralize ordering, to combine warehousing or distribution functions more efficiently, or to achieve other efficiencies”); *Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 295 (1985) (“Wholesale purchasing cooperatives . . . are not a form of concerted activity characteristically likely to result in predominantly anticompetitive effects.”).

<sup>87</sup> See 47 C.F.R. § 76.1000(c); *NBCUniversal Order*, App. A, § VII.D.



In short, there are no competitive concerns that warrant adoption of the Affiliate Associations’ proposed condition.

**C. Opponents’ Subsequent Filings Likewise Do Nothing To Change the Conclusion that the Transaction Will Not Harm Competition.**

Since September 23, 2014, when formal responses were due in this proceeding, opponents have submitted other filings (including *ex parte* letters, early-filed reply comments, and other submissions), which simply re-hash claims of alleged harms that Applicants have already rebutted in our Opposition and Response.<sup>88</sup> These subsequent filings generally raise no new arguments and do nothing to undermine Applicants’ showings that these claimed harms are unsubstantiated and without merit.<sup>89</sup> Nevertheless, Applicants briefly respond below to certain of these claims in order to highlight additional record evidence from other commenters further refuting these claims and to correct factual errors and misleading statements.

**1. Response to Erroneous Broadband “Market” Definitions.**

Certain parties, including the American Antitrust Institute, the Consumer Federation of America, Consumers Union and Common Cause, and Public Knowledge et al. continue to advance ends-serving definitions of the broadband market previously raised in the initial

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<sup>88</sup> See, e.g., Letter from Melissa E. Newman, SVP, Federal Policy and Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, Attach. at 5 (Nov. 26, 2014) (presentation to Commission staff) (“CenturyLink Presentation”) (reiterating claims in CenturyLink’s initial comments that the Transaction will lead to increased content costs for smaller MVPDs); California Black Media Reply Comments at 12-20 (reiterating claims in its petition that the Transaction will threaten programming diversity, particularly programming directed to the African-American community); My Christian TV Reply Comments at 1-7 (reiterating claims in its initial petition that the Transaction harms religious programming); Horry Telephone Cooperative Reply Comments at 2-5 (reiterating claims that the Transaction increases Comcast’s incentive to limit access to NBCUniversal content for rival MVPDs); Mayor de Blasio Letter at 2 (reiterating concerns regarding net neutrality previously raised by other commenters).

<sup>89</sup> With respect to Elan Feldman’s 11-year-old property-damage allegations (see Elan Feldman Petition to Deny; Elan Feldman Reply Comments), which are entirely unrelated to the Transaction, Comcast notes that this dispute with Mr. Feldman has been adjudicated by a jury in Dade County, FL. Mr. Feldman was found to be 83 percent at fault for the damage, and Comcast was found to be 15 percent at fault (amounting to a \$7,500 award for Mr. Feldman). See Verdict Form, *Warehouse 1050 Corp. v. Fla. Sol Corp.*, No. 09-36802 CA (11) (Fla. Cir. Ct. Dec. 15, 2014).

comments and petitions in an effort to buttress their claims that the Transaction will cause an increase in the concentration of the supposed national retail broadband “market” that will result in competitive harms for edge providers.<sup>90</sup> Similar arguments are advanced in a letter drafted by a law firm representing Netflix in the Transaction and signed by a number of professors (the “Joint Letter”).<sup>91</sup> There is no basis in economic theory, factual reality, or Commission precedent for the erroneous market definitions these commenters urge. And even if these faulty market definitions were adopted, the Transaction would present no competitive concerns.

***Relevant Geographic Market.*** As Applicants have explained, there is no national broadband “market” – the correct relevant geographic market for broadband is *local*.<sup>92</sup>

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<sup>90</sup> See Consumer Federation of American (“CFA”) Reply Comments (Oct. 29, 2014); American Antitrust Institute (“AAI”) Reply Comments (Dec. 1, 2014); Consumers Union and Common Cause Reply Comments (Dec. 17, 2014); Public Knowledge and Open Technology Institute New America Foundation (“Public Knowledge et al.”) Reply Comments (Dec. 22, 2014).

<sup>91</sup> Letter from Professors of Antitrust Law and Economics, to Chairman Wheeler and Commissioners, FCC (Oct. 20, 2014) (“Joint Letter”). It is also notable that at least two of the signers previously made public comments *in support* of key aspects of the deal. Professor Herbert Hovenkamp, for instance, said regulators would not be worried that the deal would “result in higher prices” and argued that the transaction could “benefit consumers.” *The Dodgers TV Blackout is Undermining the Comcast-Time Warner Mega Merger*, AdAge, Aug. 20, 2014, <http://adage.com/article/media/dodgers-tv-row-fuels-unease-comcast-time-warner-deal/294644/>; Mark Garrison, *Comcast’s Competition Isn’t Cable Companies – It’s Netflix*, Marketplace Business, Feb. 13, 2014, <http://www.marketplace.org/topics/business/comcasts-competition-isnt-cable-companies-its-netflix>. Professor Harry First stated that “the lack of geographic overlap is a big problem” for deal opponents, and “[i]t’s hard to make out a case” that a deal would raise prices if it involved parties in different areas. Todd Shields & David McLaughlin, *Regulatory Barriers to Time Warner Cable Deal Limited Regardless of Buyer*, Bloomberg, Dec. 23, 2013, <http://www.bloomberg.com/news/2013-12-24/time-warner-cable-sale-could-get-pass-from-regulators.html>. He went on to state, “One advantage for a combined company during a regulatory review would be that Time Warner operates in different markets than Comcast and Charter.” *Id.*

<sup>92</sup> Opposition and Response at 112-21; Israel Reply Decl. ¶¶ 16-26. At the same time, it is worth highlighting that Dr. Israel spends a considerable portion of his declaration analyzing and demonstrating that, even assuming a national broadband market *were* relevant, the Transaction presents no risk of harm to OVDs or other edge providers under the vertical foreclosure, bargaining, or other theories advanced by certain commenters. See Israel Reply Decl. ¶¶ 91-207. Public Knowledge et al. and the Joint Letter inappropriately rely on the *AT&T-MediaOne* case as precedent for defining a national broadband market, *see* Public Knowledge et al. Reply Comments at 3-5; Joint Letter at 4-5; which Applicants previously explained provides no support for (and in fact refutes) such a position, *see* Opposition and Response at 118-21. Rather, to the extent that case says anything about the broadband market itself, Applicants note that the case actually supports our position on broadband market definition and approval of the Transaction as in the public interest. Opposition and Response at 118-21; *see also* ICLE Reply Comments at 7-10 (explaining that the broadband geographic market is local and that the *AT&T/MediaOne* case cited by several parties claiming that it is national is inapposite and contrary to more recent, relevant Commission precedent).

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Consistent with the Commission's past transaction decisions, an assessment of the Transaction's effects on broadband competition must focus on whether there is any reduction of competitive choices for consumers, and consumers quite simply do not choose broadband providers at the national level.<sup>93</sup>

And at the local market level, which is the only relevant retail broadband market, this Transaction simply will not reduce broadband competition or the number of broadband choices available to consumers. Comcast and TWC serve distinct geographic areas and do not compete with one another for broadband customers. Consumers in the acquired systems will have the same number of choices among broadband providers following the Transaction as before. In other words, even if one has concerns with the current state of competition in the relevant broadband market, this Transaction will have no negative effect on broadband competition in

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<sup>93</sup> Indeed in past transactions where the Commission has analyzed the broadband ISP market, it has consistently found that the relevant market is local, that the broadband market is competitive, and that where there is little or no geographic overlap among broadband providers that seek to combine, there is no cause for competitive concern. See, e.g., *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd. 6547 ¶ 74 (2001) (“*The relevant geographic markets for residential high-speed Internet access services are local*. That is, a consumer's choices are limited to those companies that offer high-speed Internet access services in his or her area, and the only way to obtain different choices is to move. While high-speed ISPs other than cable operators may offer service over different local areas (e.g., DSL or wireless), or may offer service over much wider areas, even nationally (e.g., satellite), a consumer's choices are dictated by what is offered in his or her locality.”) (emphasis added); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. & AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd. 23246 ¶ 153 (2002) (“*Comcast-AT&T Broadband Order*”), (“Comcast and AT&T Broadband largely compete in separate geographic markets, and, to the extent their service areas overlap, we find no material increase in concentration that would raise the potential of competitive harm.”) (emphasis added), *aff'd sub nom. Consumer Fed'n of Am. v. FCC*, 348 F.3d 1009 (D.C. Cir. 2003); *Comcast-AT&T Broadband Order* ¶ 128 (concluding that a consumer's choice of ISP is “limited to those companies that offer high-speed Internet access services in his or her area”) (emphasis added); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662 ¶ 114 (2007) (“As the Commission has previously found, high-speed Internet access services, as distinct from narrowband services, constitute a relevant product market for purposes of determining the effects of a proposed merger on the public interest. The Commission also has found previously that the relevant geographic markets for residential high-speed Internet access services are local. We believe that both of these market definitions remain appropriate for the purpose of our public interest analysis.”) (emphasis added).

America – which is the proper test for a transaction review. If anything, as discussed above, the Transaction will encourage even more broadband investment and further enhance competition.<sup>94</sup>

***Relevant Product Market.*** Opponents likewise attempt to paint a distorted picture of the broadband market by claiming that the Commission should (1) exclude certain technologies like DSL or mobile wireless from the relevant product market or (2) increase the baseline speed threshold to 25 Mbps.<sup>95</sup> But there is no basis to adopt either of these proposals.

Consumers enjoy – and are using – a variety of DSL, wireless, and other broadband services to meet their Internet needs today, as Applicants detailed in our Opposition and Response.<sup>96</sup> Indeed, according to the Commission’s most recent Internet Access Services Report as of December 2013:<sup>97</sup>

- Approximately 86 percent of households are located in census tracts where at least three or more *fixed* broadband providers reported offering at least 3 Mbps downstream and 768 kbps upstream.
- At a higher speed threshold, approximately 94 percent of households are located in census tracts where two or more *fixed* providers reported offering at least 10 Mbps downstream and at least 1.5 Mbps upstream.
- 100 percent of households are located in census tracts where three or more *fixed or mobile* broadband providers reported offering at least 3 Mbps downstream and 768 kbps upstream, and approximately 98 percent are located in census tracts where two or more *fixed or mobile* providers reported offering at least 10 Mbps downstream and at least 1.5 Mbps upstream.

It makes no sense to omit DSL and/or mobile wireless altogether from the Commission’s review of the market, as some commenters have suggested. Rather, both these technologies have

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<sup>94</sup> See Opposition and Response at 46-47.

<sup>95</sup> See Joint Letter at 2-4; AAI Reply Comments at 7-9; CFA Reply Comments at 2; Consumers Union and Common Cause Reply Comments at 2-4.

<sup>96</sup> Opposition and Response at 44-47; 212-16.

<sup>97</sup> *Internet Access Services: Status as of December 31, 2013*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, at 9, figs.5(a) & 5(b) (Oct. 2014), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db1016/DOC-329973A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1016/DOC-329973A1.pdf).

proven to be (1) desired and widely adopted by consumers – the touchstone of any analysis of relevant markets; (2) capable of delivering most of today’s broadband services for many consumers, and (3) poised to continue to improve, compete, and grow into the future. In this regard, consider the following:

- Twenty of the 60 providers on Netflix’s November 2014 speed index *are DSL providers*.<sup>98</sup>
- *The growth rate in DSL subscribership exceeded the growth rate in cable subscribership* between June 2009 and June 2013 (30.7 percent for DSL versus 17.9 percent for cable). At 10 Mbps, the difference in average annual growth rates is even more pronounced: 150.6 percent for DSL versus 52.8 percent for cable.<sup>99</sup> Likewise, based on more recent Commission data, DSL subscribership grew 31 percent on average compared to 15.4 percent for cable between December 2009 and December 2013, and at 10 Mbps the average annual growth rate for DSL was 112.3 percent versus 51.9 percent for cable.<sup>100</sup>
- Likewise, mobile wireless is an increasingly attractive and capable technology option for delivering broadband. For example, according to NTIA, the percentage of U.S. population with access to a mobile wireless provider offering broadband service capability increased from 7.9 percent in December 2010 to 97.5 percent in June 2013.<sup>101</sup> Moreover, video is the largest and fastest growing segment of mobile data traffic, and is forecasted to account for over 50 percent of all global mobile data traffic by 2019. And continuing recent trends of declining prices to consumers, mobile wireless providers’ costs are expected to fall precipitously over the next several years, which will further reduce consumer prices and make mobile broadband an even more potent competitor to fixed broadband.<sup>102</sup> It is no surprise, therefore, that a survey of over 1,000 broadband users conducted by GSG at Comcast’s request specifically found that for many consumers, wireless is *already* a viable substitute for fixed broadband.<sup>103</sup>

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<sup>98</sup> See USA ISP Speed Index: November 2014, Netflix, <http://ispspeedindex.netflix.com/usa> (last visited Dec. 21, 2014).

<sup>99</sup> See Opposition and Response at 126; Israel Reply Decl. ¶¶ 69-70, 80.

<sup>100</sup> These calculations use the same methodology as that used in the Israel Reply Declaration, as prepared by Compass Lexecon, and are based on the most recent Commission data from the Internet Access Services Report as of December 2013.

<sup>101</sup> See Opposition and Response at 21.

<sup>102</sup> See *id.* at 128-30.

<sup>103</sup> See *id.* at 130-31.

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There is substantial support in the record for including DSL and mobile wireless in the relevant product market for broadband service. For example, commenters such as ADTRAN have confirmed that DSL is very much a part of the broadband market, and will become only more so over time:

DSL technologies have continued to evolve, and currently are able to support robust high-speed services, including HD video streaming. Significant enhancements have been made in improving the capacity/throughput of DSL by advances such as pair-bonding and vectoring. These advances allow carriers to take full advantage of the extensive base of copper loops that currently comprise much of the telecommunications plant in service. . . . ADTRAN itself is engaged in significant research and development to enhance the capabilities of copper-based broadband technologies. ADTRAN has developed a new product that uses a breakthrough technology called “ActivReach,” which allows service providers to deliver 100 Mbps of Ethernet services at three times the distance over legacy voice grade wiring in older and historic buildings.<sup>104</sup>

Moreover, Chairman Wheeler recently recognized that:

Technological advances are making DSL a powerful means of supplying broadband in some places for some purposes, at a fraction of the cost, and the ubiquity of copper creates competitive opportunity. . . . Innovative advances like these offer providers options for speeding broadband deployment widely and more economically. And they underscore the importance of not rejecting everything old in our rush to embrace the new.<sup>105</sup>

Chairman Wheeler subsequently noted that:

One of the reasons DSL has trailed in high-speed capacity is because of the heretofore limited capacity of copper lines. New breakthroughs, however, mean that the old copper infrastructure has a new future. Throughput over copper of 1 gigabit per second is now possible over distances of 70 meters.<sup>106</sup>

In sum, the proposals to exclude DSL from the relevant product market definition would have the Commission disregard the many competitive broadband choices that consumers currently

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<sup>104</sup> ADTRAN Inc. Reply Comments at 4-5; *see also* ICLE Reply Comments at 19-20 (citing various statistics to support strong competitive growth of DSL and wireless broadband technologies)..

<sup>105</sup> Remarks of Chairman Tom Wheeler, COMPTTEL Convention, at 3-4 (Oct. 6, 2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329767A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329767A1.pdf).

<sup>106</sup> Remarks of Chairman Tom Wheeler, Mid-Atlantic Venture Association, at 4 (Nov. 4, 2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-330315A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-330315A1.pdf).



have and use in the local markets where the combined company will operate. And the same is true of mobile wireless, which may not be a complete substitute today for all uses and all users, but is clearly an *increasingly* competitive option in many cases, and becoming only more so.<sup>107</sup>

As Dr. Israel concludes with respect to the need to include both DSL and mobile wireless in a relevant market analysis for broadband service:

In particular, Exhibit 5 of the *FCC Memo* supports my conclusion that DSL remains a viable competitive alternative to cable, particularly because a shift to “upgraded DSL,” even without going all the way to a fiber-to-the-premises solution, greatly increases DSL’s share (and reduces cable share). In particular, Exhibit 5 shows that, using today’s broadband definition (3 Mbps/768 Kbps), while cable’s share of broadband subscribers is 85 percent in census tracts with legacy DSL, it falls to 63 percent in census tracts with upgraded DSL, and below 50 percent (to 48 percent) in census tracts with fiber-to-the-premises. Similar results hold using a 10 Mbps/768 Kbps standard for broadband. The substantial decline in cable’s share when upgraded DSL is present shows the competitive impact of the ongoing upgrades of DSL technology, even in cases where the telco provider does not implement a full fiber-to-the-premises solution. And DSL upgrades, including both fiber-to-the-node and other upgrades, are expected to continue beyond the period covered by the Commission’s data . . . . Finally, I note that, the competitive options presented in the *FCC Memo* ignore mobile wireless options and thus necessarily understate the set of competitive broadband alternatives relevant to any market analysis, at least to some degree. I do not claim that mobile broadband options are equivalent to wired broadband options today, but they are certainly relevant for some people and uses today, and are sure to become increasingly relevant for more people and more uses over time, as reflected by recent statistics showing a large and growing proportion of video consumption on mobile devices, including outside the home. A forward-looking competitive analysis cannot ignore mobile options simply because they are less relevant today: Just three years ago, there was very little LTE deployment; today LTE is nearly ubiquitous in the US, and one should expect similarly rapid developments over the next few years, including growth of mobile OVDs such as that in development by Verizon.<sup>108</sup>

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<sup>107</sup> See Opposition and Response at 122-34.

<sup>108</sup> See Exhibit B ¶¶ 7-8; see also Memorandum from William Lake, Media Bureau, to Marlene H. Dortch, FCC, Exhibit 5 (Dec. 9, 2014) (“FCC Memo”); Israel Reply Decl. ¶ 29; Opposition and Response at 125-31 (describing in greater detail the capabilities, improvements, and significant growth of DSL and mobile wireless broadband technologies).



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The Commission should likewise avoid a relevant product market definition that establishes the baseline speed at 25 Mbps. As Applicants have previously noted:

- A 4 Mbps connection has been found to be sufficient to handle streaming of HD video. The fastest ISP on Netflix’s speed rankings *averaged 3.11 Mbps downstream*.
- Sixty-one percent of households in the U.S. have only one or two occupants and, therefore, are well below the five simultaneous users per household that these commenters postulate in an attempt to justify needing 25 Mbps as the baseline speed.
- The Commission has estimated that a speed of 4 Mbps would be sufficient for a “light use” broadband household engaged in *up to four Internet-related activities*, a speed of 7.9 Mbps would be sufficient for a “moderate use” household engaged in up to four Internet-related activities, and a speed of 10 Mbps would be sufficient for a “high use” household engaged in up to four Internet-related activities.<sup>109</sup>

In addition, the Department of Commerce released a report last week indicating that, based on December 2013 Census Bureau and National Telecommunications and Information Administration data, at higher speeds like 10 Mbps, the average person can choose from among two fixed broadband providers, as well as three mobile broadband providers.<sup>110</sup> In response to this report, Professor Christopher Yoo of the University of Pennsylvania Law School indicated that the report on the whole is positive and shows steady progress, and confirms the FCC’s data showing that “the level of competition for 10 Mbps service has skyrocketed in recent years.”<sup>111</sup>

Applicants applaud the Commission’s (and Chairman’s) efforts to encourage the broader and faster deployment of higher-speed Internet services, including speeds of and above 25 Mbps. However, this aspirational policy goal (and initiatives such as considering whether to adopt higher-speed thresholds for purposes of the Commission’s annual assessment on broadband deployment) are entirely separate and apart from – and, indeed, a fundamentally different

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<sup>109</sup> See Opposition and Response at 122-23.

<sup>110</sup> See Dep’t of Commerce, *Competition Among U.S. Broadband Service Providers* (Dec. 2014).

<sup>111</sup> Howard Buskirk, *Americans Still Have Few Choices for Broadband at Higher Speeds*, *Commerce Department Says*, *Communications Daily* (Dec. 18, 2014).

exercise than – the definition of a relevant market and the competitive analysis of this

Transaction. As Dr. Israel has explained:

Although it certainly makes sense for the Commission to continue to encourage faster broadband speeds to support high-use cases, some commenters have advocated using these high-use cases to define the broadband market for analysis of the present transaction. However, while such high-use cases certainly can occur, they do not define markets. To the contrary, the decisions made by the marginal customers who are likely to switch providers or reduce broadband usage, and thereby discipline a theoretical price increase or quality reduction, define the boundaries of (local) broadband markets. . . . [A] broadband definition that excludes all broadband services below 25 Mbps would miss important competitive constraints that each of Comcast and TWC faces in its footprint and thus produce an overly narrow market definition.<sup>112</sup>

Indeed, as Applicants have previously detailed, there are many competitive broadband options at speeds other than 25 Mbps that consumers currently have *and use* in the local markets where the combined company will operate. There is simply no basis to exclude real competitive options because they are under 25 Mbps – a result that would exclude the tens of millions of customers who use services at lower speeds today and will continue to do so tomorrow – from the Commission’s analysis of this Transaction. Doing so simply ignores marketplace realities and the competitive dynamic that exists.<sup>113</sup>

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Nevertheless, even if one were to ignore the record evidence (and relevant precedent concerning market definition) and assume a national broadband “market,” the Transaction would still present no competitive issues. Indeed, even at the highest speed threshold – 25 Mbps downstream – the combined company’s broadband share would increase by *only 1 percent*, {{

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<sup>112</sup> Israel Reply Decl. ¶ 29.

<sup>113</sup> See Opposition and Response at 122-37; Israel Reply Decl. ¶¶ 27-35; 67-88.

}}.<sup>114</sup> Such a *de minimis* increase poses no conceivable competitive concern and provides no basis to allege any transaction-specific harm.<sup>115</sup> If anything, a focus on the 25 Mbps speed threshold illustrates a key *benefit* of the Transaction – the extension of Comcast-level speeds to the TWC systems. As noted above, *less than a tenth* of TWC customers enjoy speeds at or above that threshold, whereas *more than half* of Comcast customers enjoy such speeds.<sup>116</sup>

## 2. Response to Public Knowledge Broadband Survey Reports

On November 13, 2014, Public Knowledge submitted two reports prepared by Dr. John Horrigan evaluating a survey intended to assess consumer perspectives on broadband choice.<sup>117</sup> These reports are based on a single survey conducted by GfK.<sup>118</sup> Public Knowledge asserts that the findings of this survey analysis can be used by the Commission to inform analysis of several ongoing proceedings at the FCC, including the Transaction.<sup>119</sup> Indeed, as explained below, in certain key respects, this survey analysis *supports* the Transaction and is consistent with the analyses submitted by Applicants and Dr. Israel.

Dr. Horrigan’s “Consumers and Choice” report primarily focuses on whether respondents have considered switching ISPs and whether they would find switching ISPs easy. He reports that approximately a quarter of both wireless and wired Internet users have considered switching

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<sup>114</sup> See FCC Memo, Exhibit 1; *see also* Exhibit B, ¶ 11.

<sup>115</sup> See Opposition and Response at 146-47 & n.454; *see also* Israel Reply Decl. ¶ 35.

<sup>116</sup> See Opposition and Response at 146-47 & n.454.

<sup>117</sup> Letter from John Bergmayer, Public Knowledge, to Marlene H. Dortch, FCC (Nov. 13, 2014) (“Public Knowledge Letter”); *see also* Public Knowledge et al. Reply Comments at 8-12.

<sup>118</sup> John B. Horrigan, *Consumers and Choice in the Broadband and Wireless Markets* (Nov. 2014) (“*Consumers and Choice*”); John B. Horrigan, *Smartphones and Broadband: Tech Users See Them As Complements and Very Few Would Give Up Their Home Broadband Subscription in Favor of Their Smartphone* (Nov. 2014) (“*Smartphones and Broadband*”).

<sup>119</sup> Public Knowledge Letter at 4.

home broadband service providers, and that at least 60 percent of both wireless and wired Internet users would find switching providers at least somewhat easy.<sup>120</sup>

The primary focus of Dr. Horrigan’s “Smartphones and Broadband” report is on the preferences of consumers regarding wired and wireless broadband, as well as the specific performance of these services. Among other things, Dr. Horrigan reports that 92 percent of respondents are at least somewhat unlikely to cancel wired broadband service and rely on wireless broadband for Internet access. At the same time, however, he also reports that 29 percent of respondents prefer using a smartphone to a device with a larger screen to watch online video, including 40 percent of respondents between the ages of 18 and 29.<sup>121</sup>

While the Public Knowledge submission was clearly intended to reply, in part, to a consumer survey commissioned by counsel for Comcast and conducted by Global Strategy Group (“GSG”), discussed in Applicants’ Opposition and Response and the Reply Declaration of Dr. Israel, it fails to refute the findings in the GSG survey.<sup>122</sup> The GSG survey assessed consumers’ willingness to switch broadband providers if access to edge providers were degraded by their current broadband provider – including their willingness to switch to particular types of broadband providers (e.g., DSL or wireless), and, in particular, broadband providers delivering *slower* service. That issue is not even addressed (much less contradicted) by Dr. Horrigan’s survey results.

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<sup>120</sup> *Consumers and Choice* at 2. Though drawing conclusions from the survey regarding switching broadband providers and choice for “very high-speed home broadband service,” the report and survey do not indicate what speed(s) respondents consider to be within this category or how and whether the survey defined such a service. *See id.*

<sup>121</sup> *Smartphones and Broadband* at 6-7.

<sup>122</sup> Israel Reply Decl., App. I.

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In particular, the GSG survey assessed whether broadband customers would be willing to switch providers (or take other actions) in response to an attempt by their current ISP to degrade their broadband service. The GSG survey shows that over 70 percent of cable and phone companies' broadband subscribers would likely switch broadband providers – including to a DSL or wireless provider, *or even to an ISP with slower speeds* – if their ISP blocked or degraded access to Internet content. The Public Knowledge survey does not ask this question or in any way undermine the related findings. If anything, the Public Knowledge survey findings tend to support the reliability of the GSG findings: They indicate that 61 percent of wired broadband users think it would be at least somewhat easy to switch broadband providers.<sup>123</sup> To be sure, the Public Knowledge survey finds that only a quarter of both wireless and wired Internet users have, *in fact*, considered switching home broadband service providers, but that is hardly surprising or inconsistent with the GSG survey. There is no evidence that broadband providers today do degrade or have degraded customers' or edge providers' service, and thus no reason to think the users in the Horrigan study would have confronted the key issue addressed in the GSG survey. In short, these two surveys taken together indicate that most consumers would be willing and able to switch ISPs *if* an ISP limited their Internet access or slowed their Internet speeds but reaffirm that this is simply not a common occurrence.<sup>124</sup>

Further, Dr. Horrigan's survey results, like the GSG survey results, demonstrate the importance of including mobile broadband as at least a partial substitute for fixed broadband. As

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<sup>123</sup> *Consumers and Choice* at 2.

<sup>124</sup> The GSG survey also found that consumers *frequently* switch broadband providers – *one-third* of survey respondents switched providers in at least the past two years, and nearly *one-half* switched providers within the past four years. These results are consistent with the results of a survey commissioned by the Commission in 2010, finding that over the prior three years 36 percent of Internet users indicated that they had switched their ISP. And these results are further confirmed by Comcast's churn data, which indicate that, over the course of a single year, a significant portion of Comcast's broadband subscribers switch from its service. Opposition and Response at 136; Israel Reply Decl. ¶ 94.

noted, Dr. Horrigan reports that a large percentage of respondents – especially younger ones – prefer using a smartphone to a device with a larger screen to watch online video.<sup>125</sup> Not surprisingly, the GSG survey similarly found that over 40 percent of respondents indicated that they use mobile wireless broadband at least as much as wired broadband *for high bandwidth activities*, and about 60 percent use mobile wireless broadband at least as much as wired broadband for low bandwidth activities.<sup>126</sup> More specifically, a full 10 percent of the survey respondents use mobile wireless as a substitute for fixed broadband service today, answering that they always opt to use their mobile wireless broadband service, even for accessing high-bandwidth streaming services like Netflix, YouTube, and Hulu (slightly more always use mobile wireless service for low-bandwidth activities). These results confirm that a significant share of broadband consumers already view mobile wireless broadband services to be a satisfactory alternative to fixed broadband services. Moreover, the fact that the proportion of respondents to the Public Knowledge survey was significantly higher for the younger age group indicates that this percentage, while already sizeable, is likely to increase over time.

Given this competitive landscape, it would be unreasonable to exclude these services in any analysis of the Internet access choices currently available to consumers in the local markets where the combined company will operate.<sup>127</sup> As noted above, a proper competitive analysis of the Transaction must take into account *all* the broadband options, including mobile wireless, that consumers currently have *and use* in the local markets where the combined company will operate.

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<sup>125</sup> *Smartphones and Broadband* at 6-7.

<sup>126</sup> Opposition and Response at 21, 130-31; *see also* Israel Reply Decl. ¶ 88.

<sup>127</sup> *See* Israel Reply Decl. ¶ 88 (“This degree of wireless usage indicates that wireless is a relevant alternative to wireline today for at least some customers, with the degree of substitutability increasing rapidly.”).

Notwithstanding these helpful findings, it is important to note that the Public Knowledge survey suffers from certain methodological issues. Chief among them is that limited information about the survey has been provided, including the sampling approach, survey design, and the number of non-respondents and incomplete responses – essential information that Comcast supplied in connection with the GSG survey. Without this information, it is not possible to fully evaluate the reliability of the survey results.<sup>128</sup>

### **3. Response to Netflix and Others Alleging Peering/Backbone Harms.**

AAI, Public Knowledge et al., and the Joint Letter repeat claims raised by other commenters and petitioners, including Netflix and Cogent,<sup>129</sup> that the Transaction will increase the combined company's incentive and ability to use Internet interconnection as a tool to foreclose or increase the costs for Internet content providers.<sup>130</sup> As summarized in the following bullets, these claims have been fully answered in Applicants' Opposition and Response, information request responses, and other subsequent filings, as well as through the economic analyses prepared by Dr. Israel and Dr. Carlton, and the declarations of Kevin McElearney, SVP of Comcast Network Engineering, and a third-party expert engineer, Dr. Constantine Dovrolis of the Georgia Institute of Technology.

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<sup>128</sup> Public Knowledge is not alone in its failure to supply backup data for third parties to analyze and test its assertions. In contrast to Applicants, who have submitted all backup data supporting all of our economic analyses, the GSG survey, and other calculations, most parties filing substantive economic analyses or surveys have provided no backup data whatsoever. The only exception to this general omission is Cogent, which supplied a limited amount of backup data supporting Dr. Farrell's analysis. Applicants assume and expect that parties filing substantive economic analyses today will be supplying backup data so that Applicants have a fair opportunity to evaluate these parties' claims; without this, Applicants cannot test them and the Commission cannot give them any weight.

<sup>129</sup> See Netflix Petition to Deny at 43-71, 76-79, 84-87; see also Letter from Markham C. Erickson, Steptoe & Johnson LLP, Counsel for Netflix, to Marlene H. Dortch, Secretary, FCC (Oct. 16, 2014) (attaching presentation to Commission staff); Letter from Christopher D. Libertelli, VP, Global Public Policy, Netflix, to Marlene H. Dortch, Secretary, FCC, at 2-5 (Nov. 5, 2014) ("Nov. 5 Netflix *Ex Parte*").

<sup>130</sup> See Joint Letter at 6-10; AAI Reply Comments at 5, 9-11; Public Knowledge et al. Reply Comments at 12-14.



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- The Transaction has almost no effect on the highly competitive transit market. And assertions about Applicants' larger share of the putative "national broadband market" do not change this. Those relate to the *retail* broadband market, which is an entirely different market.
- Given the large number of paths into the Comcast network, the low-cost/high quality of such paths due to the competitiveness of the transit market, and Comcast's reliance on these paths to maintain a viable broadband service, theories of harm based on disrupting interconnection points are not viable. The wide range of interconnection options for providers, including the dozens of settlement-free routes into Comcast's network and substantial commercial peering and transit connections with CDNs and ISPs, means that no edge provider is required to negotiate directly with Comcast to access its network. And in the porous, interconnected, and highly redundant Internet ecosystem, any attempt to restrain OVD access to Comcast's network by degrading or raising prices on some routes would substantially disrupt Comcast's overall Internet connectivity. Thus, Comcast lacks the *ability* to foreclose OVDs or other edge providers.
- Given the complementary relationship between edge providers and Comcast's broadband business (with OVD services, for example, increasing Comcast's returns on investment in its high-speed broadband network), Comcast does not have today and will not have in the future any *incentive* to block or degrade access to Internet content from OVDs or other edge providers. Comcast needs edge providers to offer attractive content, applications, and services so that existing and new Internet customers continue to demand Comcast's high-growth broadband service. Well-established economic theory teaches that strategies to leverage a strong position in one industry (broadband) to foreclose competition in a complementary industry (OVD/video) are rarely profitable and would not be so in this instance. To the extent commenters are right that cable operators are in a strong market position today due to the high quality of their broadband offerings, any attempt to drive consumers back toward traditional video would only serve to *weaken* that market position, an economically irrational strategy. And OVDs are significant purchasers of NBCUniversal content. Indeed, as noted above, Netflix is now one of the biggest purchasers of content.<sup>131</sup> This provides yet another disincentive for Comcast to harm OVDs.

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<sup>131</sup> See Theodore A. Sarandos, Chief Content Officer, Netflix, Inc., UBS Global Media and Communications Conference, Tr. at 5 (Dec. 8, 2014). Another commenter, G2 Media ("G2"), complains about failed negotiations it had with NBCUniversal to license content for G2's OVD service. See Letter from Darryl Gill, President and CEO, G2 Media, Inc., to Marlene H. Dortch, FCC (Dec. 2, 2014). But there is nothing improper or concerning about the fact that G2 and NBCUniversal did not reach agreement. As discussed, NBCUniversal has licensed content far and wide to various OVDs, including both established players and startups. For the record, however, NBCUniversal engaged seriously in commercial discussions with G2 over a period of eighteen months from mid-2011 to the end of 2012. Among other issues, G2 did not demonstrate that it was qualified to meet the MVPD Price Condition or that it was prepared to undertake the obligations expressly contemplated by that condition. And, notwithstanding G2's current position that it "clearly" met the requirements of the Benchmark Condition in the *NBCUniversal Order*, at

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- Comcast’s customers have important and growing options for broadband providers, through which the marketplace can effectively discipline any attempt by Comcast to degrade edge provider access to its last-mile network. Any reduction in demand for broadband service would be very costly to Comcast – as evidenced by customer lifetime value (“CLV”) calculations that show that if a customer were to cancel (or even reduce the tier of) broadband service, this would eliminate a large fraction of that customer’s overall lifetime value to Comcast. Such calculations show that the loss of a data subscriber would inflict a much greater loss of value to Comcast than the loss of a video subscriber. Thus, attempting to degrade or foreclose OVDs would actually harm Comcast’s broadband business because broadband subscribers would likely switch to another broadband provider or downgrade from/forego upgrading to Comcast’s higher broadband tiers – which are attractive specifically because they enable the most consumption of high-bandwidth applications including video. Further, Comcast would risk such harm to its broadband business without any offsetting benefit to its video business.
- Nor is there any merit to the claim that Comcast will have increased bargaining leverage vis-à-vis edge providers and their agents, enabling the combined company to raise prices for interconnection with the Comcast network. The small size of Comcast’s interconnection charges and the dozens of settlement-free routes into the Comcast network, as well as the many other substantial commercial peering and transit connections with CDNs, ISPs, and larger edge providers, clearly refute any assertion that Comcast has or exploits market power in interconnection.
- And even if interconnection prices were to change, this would not harm consumers or competition. Direct interconnection can cut out the middle man, resulting in an economically efficient and mutually beneficial outcome in many instances. And the ISP broadband platform is an example of a two-sided market, with charges being paid by either side of the market (i.e., edge providers and broadband customers). Additional charges on the edge provider side should result in lower prices for broadband customers (all else equal), and requiring edge providers to pay a greater share of the incremental cost of the traffic generated by their services would incentivize them to make more efficient decisions about how to deliver these services.<sup>132</sup>

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no time did G2 demonstrate (or even claim) that it had a qualifying peer agreement for the programming it was seeking, namely, NBCUniversal’s full linear channel lineup. Nonetheless, NBCUniversal offered good-faith proposals for G2 to license a substantial amount of NBCUniversal network content and attempted to work through various business issues with G2. Ultimately, in August 2012, G2 rejected NBCUniversal’s latest counter-proposal and unilaterally ceased negotiations with NBCUniversal. NBCUniversal continued to reach out to G2 through the end of 2012, but G2 has not resumed negotiations (nor, tellingly, did G2 ever initiate any remedies under the *NBCUniversal Order* conditions).

<sup>132</sup> See Israel Reply Decl. ¶¶ 10-22; Carlton Decl. ¶¶ 11-15; Opposition and Response at 195-239; *see also* Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast, to Marlene H. Dortch, FCC, (Dec. 3, 2014) (providing additional detail regarding the CLV calculations referenced in Dr. Israel’s Reply Declaration and Applicants’ Opposition and Response).

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In short, Comcast has no such incentive or ability today – as evidenced, among other compelling facts and data in the record, by the interconnection agreement with Comcast that Netflix signed and immediately recognized as good for Netflix and good for consumers – and the Transaction will not change that reality.<sup>133</sup>

Pointing to its one pre-transaction agreement with Comcast,<sup>134</sup> Netflix nonetheless continues to insist that the mere existence of any paid peering arrangements is evidence of a competitive harm.<sup>135</sup> But this assertion fails as matter of economics and common sense. As Kevin McElearney’s detailed declaration makes clear, at all times during its dispute with Cogent and Netflix, Comcast continued to provide its customers with high-quality, high-speed, high-performance broadband service, including the delivery of Netflix video, so long as Netflix sent that video to Comcast’s network over uncongested links, such as those provided by Limelight. It was Netflix that chose *unilaterally* to degrade its own customers’ experience by deliberately sending most of its traffic to Comcast’s network on routes that Netflix knew lacked sufficient capacity and ignoring other available routes that could easily have handled its traffic – all in an effort to increase its bargaining leverage for free direct peering from Comcast and other ISPs.<sup>136</sup> And although Netflix claims that its traffic was intentionally being throttled, it turns out

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<sup>133</sup> In addition, Netflix’s allegation that its direct interconnection agreement with Comcast somehow leads to higher costs for consumers is directly contrary to well-established economic and Internet engineering principles, as Dr. Israel and Dr. Dovrolis have both shown. As noted, investment in the Internet historically has been funded by both end users and sending networks (whether edge providers or their transit agents). If edge providers or transit agents could suddenly demand dedicated direct interconnection for free, the result would be higher prices and less efficient interconnection for consumers. See Israel Reply Decl. ¶¶ 180-197; Dovrolis Decl. at 24.

<sup>134</sup> And, in the AT&T-DirecTV proceeding, Netflix points to its agreement with AT&T.

<sup>135</sup> Todd Spangler, *Netflix Responds to Comcast*, Variety, Sept. 24, 2014, available at <http://variety.com/2014/digital/news/netflix-responds-to-comcast-its-extortion-to-demand-payment-for-delivering-video-1201312847/>.

<sup>136</sup> See McElearney Decl. ¶¶ 21-42.

that it was Cogent – not Comcast – that was to blame.<sup>137</sup> Indeed, Cogent recently admitted to prioritizing traffic of its retail customers over its wholesale customers, including Netflix.<sup>138</sup>

Furthermore, it was not Comcast that requested direct interconnection with Netflix – Comcast would have been perfectly happy to continue receiving Netflix’s traffic indirectly through other peers or CDNs, as it had done for years from Netflix and other edge providers without incident. It was Netflix that proposed a direct path into Comcast’s network. And when Netflix and Comcast ultimately worked out a direct interconnection agreement – involving a “tiny” amount of money, as Netflix recently told the Wall Street Journal<sup>139</sup> – Netflix’s CEO acknowledged that it “*works great for consumers.*”<sup>140</sup> Netflix only later changed its tune, deciding to lobby for a regulatory mandate of free peering for itself, both in the Commission’s Open Internet proceeding and through this Transaction. But such a mandate would not only abrogate Netflix’s direct interconnection agreement with Comcast, it would also shift all of Netflix’s transmission costs onto ISPs and their customers. This is a luxury enjoyed by no other OVD (or traditional cable programmer), all of which must pay for the cost of delivering their traffic.

In all events, several new comments, as well as recent news reports, further rebut the theories of potential harms to OVDs alleged by Netflix, AAI, or others. For example, ICLE filed a substantial comment, joined by eleven notable independent professors and scholars of law and

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<sup>137</sup> See *id.* ¶¶ 31-42.

<sup>138</sup> See Dan Rayburn, *Cogent Now Admits They Slowed Down Netflix’s Traffic, Creating a Fast Lane & Slow Lane*, Streaming Media Blog (Nov. 5, 2014), <http://blog.streamingmedia.com/2014/11/cogent-now-admits-slowed-netflixs-traffic-creating-fast-lane-slow-lane.html>.

<sup>139</sup> See Gautham Nagesh & Shalini Ramachandran, *Comcast, TWC Blast Critics of Merger*, Wall St. J., Sept. 24, 2014, available at [http://www.wsj.com/articles/comcast-time-warner-cable-say-merger-wouldnt-reduce-choice-1411563601?mod=WSJ\\_newsreel\\_1](http://www.wsj.com/articles/comcast-time-warner-cable-say-merger-wouldnt-reduce-choice-1411563601?mod=WSJ_newsreel_1).

<sup>140</sup> See Opposition and Response at 17, 211 (quoting emails from Netflix’s CEO to Comcast executives).

economics, supporting the Transaction and addressing allegations that Comcast could use interconnection to extract tolls from edge providers, among others. ICLE explains that the competitive and dynamic nature of the Internet ecosystem that Applicants have previously described addresses any such concern:

Comcast has publicly stated that there are . . . settlement-free peering partners and numerous . . . CDN delivery relationships [that provide access to its network]. And, taking the transit market as an example to examine the highly competitive nature of these different paths to deliver traffic to Comcast, transit prices available to Internet content providers have fallen by a remarkable 99.94% on a price per Mbps basis since 1998. The availability of these multiple alternative avenues to deliver traffic to Comcast, and the ready availability of access to a transit market where prices have been falling precipitously, together firmly constrain Comcast’s ability to set prices for direct connections. Critics who claim that this merger will enable Comcast to leverage its greater market share to foreclose Internet content providers, or act as a “bottleneck,” are conveniently ignoring the existence of this constraint on Comcast’s pricing freedom.<sup>141</sup>

As a result, ICLE explains that the Transaction will not affect the bargaining power of smaller edge providers, “because those small edge providers (who happen also to be the vast majority of participants in the Internet edge ecosystem) will be able to choose from the multitude of choices in a highly competitive market to deliver their Internet content to Comcast [without] any direct bargaining relationship with Comcast at all.”<sup>142</sup> And the larger edge providers like Netflix not only have the protection of “the multitude of alternative highly competitive paths to deliver traffic to Comcast discussed earlier,” but “will also be able to leverage the high demand for their Internet content among Comcast’s broadband customers, as well as their enormous

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<sup>141</sup> ICLE Reply Comments at 28; *see also* Comments of Holtz-Eakin and Rinehart at 4 (“Even after the transaction, the competitive market for content delivery which includes thousands of providers will continue to offer the four basic kinds of service (transit, content delivery networks or CDNs, settlement free peering, and direct connection), affording content creators ample means into the ISP’s network, and thus ultimately nullifying Comcast’s power over these companies.”).

<sup>142</sup> ICLE Reply Comments at 29; *see also* Comments of Holtz-Eakin and Rinehart at 6 (“In total, the multiplicity of arrangements and competition for entry points into . . . Comcast’s network severely hampers their power over both large and small content providers.”).

traffic volumes, to negotiate [direct interconnection, if they seek it] at least on even terms with a merged Comcast.”<sup>143</sup>

Also incorrect are Netflix’s more recent claims that competition in the transit market has no impact on interconnection prices because ISPs like Comcast have “terminating access monopolies.”<sup>144</sup> These claims are belied by the marketplace realities described above and by the extensive analysis and evidence Comcast and others have already provided that show how ill-suited that legacy PSTN concept (one that involves different technical considerations for interconnection) is to the dynamic, multi-homed and redundant Internet backbone.<sup>145</sup> Netflix’s claims also fail by its own admission that the prices at issue in its arrangement are “tiny.”

Finally, while Netflix clearly would be advantaged from a mandate that Comcast grant it free peering, it fails to show how such a requirement could possibly serve the public interest. Indeed, as noted Internet industry analyst Larry Downes recently put it in *Forbes*, “Netflix’s call for regulatory intervention to help manage its costs is nothing unusual . . . . Rather [than] compete evenly with the startups, they urge regulators to stifle or stop the

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<sup>143</sup> ICLE Reply Comments at 30-32 (also citing research by David Clark, a leading engineer of the Internet and scientist at the MIT Information Policy Project, highlighting the ability of large edge content providers to both determine, as well as avoid (or exploit) congestion on the Internet at a moment’s notice); *cf.* Comments of Holtz-Eakin and Rinehart at 5-6 (“Clark also found that ‘congestion does not always arise over time, but can come and go essentially overnight as a result of network reconfiguration and decisions by content providers as to how to route content.’ Netflix is akin to CBS in its bargaining position. Because Netflix has highly sought after content, nearly 30 percent of peak traffic is dedicated to its delivery, and as Clark notes, it has discretion in determining the route of traffic in a network. Combined, the content provider has substantial bargaining power in negotiations that limits Comcast’s bargaining position.”); ICLE Reply Comments at 34-35 (explaining benefits to consumers in two-sided markets such as an ISP’s broadband platform when charging an Internet content service due to significant increases in its data consumption).

<sup>144</sup> See Nov. 5 Netflix *Ex Parte* at 2-5.

<sup>145</sup> See Geoff Huston, *Internet Peering and Settlements*, APNIC, [http://www.apnic.net/community/ecosystem/i\\*orgs/number-misuse/internet-peering-and-settlements](http://www.apnic.net/community/ecosystem/i*orgs/number-misuse/internet-peering-and-settlements) (last visited Dec. 15, 2014).

innovators by forcing them to abide by laws written for earlier technologies.”<sup>146</sup> Moreover, such a requirement would eliminate any economic incentives for edge providers like Netflix to send their traffic in a bandwidth-efficient manner and shift Netflix’s and other edge providers’ basic transmission costs to all Comcast end users. It would also undermine the type of cooperative innovation in streaming efficiency being pursued by the Streaming Video Alliance – in which, strangely, Netflix has refused to cooperate.<sup>147</sup> In sum, Netflix’s proposed relief would increase consumer costs and/or decrease Comcast’s investment incentives. Beyond this, Netflix does not explain which entities would qualify for free interconnection, how such a mandate would affect CDN and transit provider business models, or the costs of small and start up edge providers that cannot afford to self-supply the distributed servers necessary to even take advantage of direct interconnection opportunities.

In sum, Netflix’s request is not for a condition to serve the public interest but simply to improve the economics of Netflix’s business model – hardly a function the Commission should shoulder in this Transaction review (or any other proceeding), or one that the Commission could responsibly pursue on the slim record and analysis Netflix has provided.

#### **4. Response to Viamedia.**

Largely reiterating its initial petition to deny, Viamedia, a third-party advertising broker, again alleges in its comments that the Transaction would somehow allow Comcast to control the

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<sup>146</sup> Larry Downes, *How Netflix Poisoned the Net Neutrality Debate*, Forbes, Nov. 25, 2014, available at <http://www.forbes.com/sites/larrydownes/2014/11/25/how-netflix-poisoned-the-net-neutrality-debate/>; see also Larry Downes, *This Year’s Net Neutrality Debate Has Completely Missed the Point*, Wash. Post, Aug. 27, 2014, available at <http://www.washingtonpost.com/blogs/innovations/wp/2014/08/27/this-years-net-neutrality-debate-has-completely-missed-the-point/>.

<sup>147</sup> See Letter from Commissioner Ajit Pai, FCC, to Reed Hastings, Netflix (Dec. 2, 2014); see also Todd Spangler, *Streaming Video Alliance Trade Group Launches, Without Netflix or YouTube*, Variety, Nov. 14, 2014, available at <http://variety.com/2014/digital/news/streaming-video-alliance-trade-group-launches-without-netflix-or-youtube-1201356366/>.



spot cable advertising market.<sup>148</sup> Applicants have already fully addressed and refuted Viamedia’s claims in our Opposition and Response and other filings,<sup>149</sup> and, as noted above, the only advertisers who have filed in this proceeding and would presumably be concerned by the supposed distortion of their marketplace options all strongly *support* the Transaction.

Because Applicants serve distinct geographic areas and do not compete with each other for local advertisers, the Transaction will have no effect on competition in the advertising marketplace.<sup>150</sup> Nor will Comcast’s management of additional “interconnects” post-transaction reduce competition in any market. It is not relevant as a competition matter how *many* interconnects Comcast will hold or whether they are in top DMAs: each interconnect can only sell advertising in areas served by its member MVPDs in the specific interconnect market DMA.<sup>151</sup> As a result, the Transaction has no effect on competition either in local advertising or

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<sup>148</sup> See generally Viamedia Reply Comments; see also Letter from David McIntosh, Counsel for Viamedia, Inc., Mayer Brown LLP, to Marlene H. Dortch, FCC (Nov. 17, 2014) (*ex parte* notice for meeting with Commission staff). In a recent *ex parte* notice, CenturyLink reiterated its advertising-related claims made in its initial comments, see CenturyLink presentation at 10, and Mayor de Blasio raised similar claims, see Mayor de Blasio Letter at 2-3. As with Viamedia’s claims, Applicants have already addressed these concerns in our Opposition and Response.

<sup>149</sup> See Opposition and Response at 271-82; Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Oct. 16, 2014) (“Oct. 16 Comcast Advertising *Ex Parte*”).

<sup>150</sup> Viamedia claims that it is inconsistent for the Applicants to “assert that spot cable advertising prices are constrained by robust competition from other local advertising media,” while acknowledging that many advertisers do not regard cable and broadcast advertising as close substitutes. See Viamedia Reply Comments at 5. However, Viamedia simply misunderstands the point. The fact that spot cable advertising is not a close substitute for some broadcast advertisers does not mean that spot cable advertising prices do not discipline broadcast advertising prices and vice versa. As Drs. Rosston and Topper explained in their reply declaration, “local cable advertising prices are disciplined by robust competition with other local advertising media. The appropriate relevant market is a broad local advertising market comprised of advertising on local broadcast stations, local cable television, and a range of other media and advertising platforms, including online video advertising, other online advertising, radio, print, outdoor, and direct mail.” Rosston/Topper Reply Decl. ¶ 218. Therefore, “it would not be appropriate to measure the impact of this transaction in a spot television advertising market that includes broadcast and cable and excludes all other media.” Rosston/Topper Decl. ¶ 245. Doing so would artificially narrow and exaggerate the competitive impact of the transaction by failing to consider the intense competition from other local advertising media. *Id.* ¶ 246. Indeed, in each DMA, advertisers will continue to enjoy a number of alternative outlets post-transaction that compete vigorously for local advertising dollars, with varying degrees of substitutability – including multiple television and non-television options.

<sup>151</sup> See Opposition and Response at 277-79.

in the so-called advertising “interconnect” DMA. Nor is there validity to Viamedia’s overall claim, even leaving aside its lack of any connection to the Transaction.

As a third-party broker, Viamedia competes directly with interconnects to sell advertising inventory, and may continue to do so post-transaction. Comcast, however, has no obligation to do business with a competitor, much less subsidize a competitor’s business by letting Viamedia use the interconnect facilities Comcast has developed through substantial effort and investment to support its own competing ad representation business. In fact, forcing such an obligation on Comcast would harm both Comcast and the MVPDs that participate in its existing interconnects, since the value of an interconnect increases for all participants as the number of MVPDs in the DMA that participate in the interconnect increases.<sup>152</sup> With all of this said, Comcast offered Viamedia a deal on market-based terms that would have permitted Viamedia to demonstrate to Comcast that this shared solution was viable and valuable. Viamedia does not dispute this. Yet Viamedia walked away from that offer, choosing instead to gamble that the Commission would impose conditions for its benefit in this Transaction. The Commission should not condone – let alone reward – such tactics by encumbering the Transaction with any of Viamedia’s unnecessary conditions.

Viamedia’s claims that the Transaction will give Comcast supermajority control of NCC Media fare no better. There will be no transaction-specific effect on NCC Media’s ownership. Comcast already owns a majority equity ownership interest in NCC Media, and acquisition of

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<sup>152</sup> See *id.* at 276-79. Viamedia’s ongoing attempts to distinguish between managers of interconnects like Comcast and TWC and cable advertising representation services is a self-serving and artificial distinction used to claim a competitive harm regarding cable representative services where none exists. Interconnects are managed by the largest MVPD in each DMA. Among the services provided, managing MVPDs negotiate ad sales on behalf of all participating MVPDs – a key efficiency provided by interconnects for both advertisers and participating MVPDs. When Comcast acts as a managing MVPD of an interconnect, it is not “forcing” Comcast cable advertising representation services on participating MVPDs; rather, it is performing its sales duties incumbent upon it as the manager of the interconnect.

TWC’s minority interest presents no competitive issues.<sup>153</sup> NCC Media has independent management and its own governing board. Post-transaction, Comcast and Cox will each have one vote, and major decisions will have to be made with both parties’ consent, so there is no basis for a suggestion that Comcast could somehow use NCC for its own ends, directing NCC business to Comcast interconnects for example, as Viamedia alleges. And the Transaction does not change NCC Media’s incentive to partner with as many MVPDs (or their sales representatives) as possible to be able to offer advertisers broad access to the spot cable/MVPD market, nor would it allow NCC to override the advertising choices of NCC’s clients.<sup>154</sup> In all events, there will be no reduction in choice among such services for local advertisers from the Transaction. An MVPD will continue to have the same ability to sell its local cable advertising time directly to advertisers, through NCC Media (of which Viamedia is a partner) or another national firm, or through any of the interconnects that Comcast manages, which are open to all MVPDs.

In short, there will be no competitive harm to the advertising marketplace caused by the Transaction (and, as noted above, quite a few *benefits* will accrue to advertisers). Rather, Viamedia’s concerns are nothing more than an attempt by a competitor of Comcast and TWC to use this proceeding to advance its own parochial business interests.

## **5. Response to LPTV Spectrum Rights Coalition.**

The LPTV Spectrum Rights Coalition (“LPTV Coalition”), a research and lobbying organization representing certain low-power television (“LPTV”) broadcasters, has alleged that Comcast is “abusing the leased access rules by offering zero-cost rates to some LPTV stations,

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<sup>153</sup> See *id.* at 280-81.

<sup>154</sup> See Oct. 16 Comcast Advertising *Ex Parte* at 4.

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and standard rates to others”<sup>155</sup> – an allegation identical to the one previously raised by member company Beach TV, which Applicants addressed in our Opposition and Response.<sup>156</sup> The LPTV Coalition’s claim – as with Beach TV’s – is meritless as a matter of law and policy and is wholly unrelated to the Transaction. At base, it is simply a frivolous attempt to use this proceeding to obtain forced carriage for its members on Comcast’s systems, or more favorable terms of carriage than they would otherwise be able to obtain in the marketplace or (if desired) via leased access.

Contrary to the LPTV Coalition’s assertions, Comcast is in fact a good friend to the LPTV community, as many LPTV broadcasters recognize. As the Commission is aware, very few LPTVs have must-carry rights, and LPTVs have the ability to use the leased access model to ensure carriage on cable systems. Nevertheless, where particular LPTVs serve important viewer needs or interest, Comcast may choose to affirmatively arrange carriage with them via retransmission consent agreements.<sup>157</sup> Many of the LPTV stations Comcast carries in this manner offer multicultural or faith-based programming that serve a niche audience specific to the local market.<sup>158</sup> Comcast’s strong record of carrying diverse LPTV stations is reflected in the support the Transaction has received from the LPTV community.<sup>159</sup> Comcast is confident that

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<sup>155</sup> Letter from Mike Gravino, Director, LPTV Spectrum Rights Coalition, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, MB Docket Nos. 14-57 & 14-90 (Sept. 29, 2014).

<sup>156</sup> Opposition and Response at 320-22 (responding to Comments filed by Beach TV Cable Co., Inc. d/b/a/ Key TV (“Beach TV”) in this proceeding).

<sup>157</sup> See *infra* note 159. Comcast provides extensive carriage to approximately 133 LPTV stations through a combination of retransmission consent and/or must-carry arrangements.

<sup>158</sup> For example, Comcast carries numerous LPTV stations (or LPTV multicast channels) across its coverage area that feature: (1) Spanish-language programming including from Azteca America, Estrella, MundoFox, Telemundo, and UniMas; (2) other diverse programming (e.g., in Chicago, Polish-language and Korean-language programming); and (3) faith-based, local programming in various markets (e.g., Comcast carries two such LPTV stations in Detroit).

<sup>159</sup> See, e.g., Letter from Donald Bae, General Manager, WOCC Chicago, to Chairman Wheeler, FCC, at 1 (Oct. 21, 2014) (“WOCC is licensed to KM LPTV of Chicago-13, LLC, a Korean-American broadcasting company.

its extensive and *elective* carriage of diverse LPTV stations compares very favorably to that of other MVPDs.<sup>160</sup>

The LPTV Coalition argues that Comcast is “abusing leased access rules” by entering into retransmission consent agreements with some, but not all, LPTV broadcasters. But, as Comcast explained in its response to Beach TV, since Comcast is not *compelled* to carry *any* of these LPTV providers, except to the extent they apply for carriage via the leased access provisions, it is certainly free to decide to reach voluntary arrangements with *some* of these LPTV providers whose programming it affirmatively seeks (based, in part, on customer demand for the programming), in its editorial discretion, to include in its lineup. Doing so does not create a “carry one, carry all” obligation, which would essentially eliminate Comcast’s right to choose to carry stations whose programming it wants.<sup>161</sup> Leased access is available precisely so that

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We have taken digital broadcasting seriously by using it to transmit five different programming networks: MundoFox, a Spanish-language network; KBC-TV, which provides Korean content; Z Living (formerly called Veria Living), a wellness channel; TheCoolTV, which features videos that appeal to urban, indie, and rock music fans; and Soul of the South, which provides news and entertainment geared to African Americans . . . Comcast is helping both WOCC and these programmers reach new viewers. We have found Comcast to be a good partner in Chicago, and we hope you allow it to grow into areas now served by Time Warner Cable.”); Letter from Michael H. Jahrmarkt, President, Northstar Media, LLC, to Chairman Wheeler, FCC, at 1 (Oct. 29, 2014) (“Comcast has demonstrated its commitment to offering its Spanish-language subscribers more than just one or two programming channels, even when that has meant carrying LPTV signals it is not obligated to carry.”); Letter from Terry Arnold, Sr. Vice President / General Manager, WLPC-TV Detroit, to Chairman Wheeler and Commissioners, FCC, at 1 (Oct. 22, 2014) (“WLPC-CD, Detroit [is] a minority-owned Class A station that offers compelling Christian programming over the air to 1.2 million Detroit area households – and reaches double that number of households regionally thanks to our carriage on Comcast cable systems here in Michigan.”); Letter from Eric D. Stringfellow, Executive Director, University Communications, Jackson State University, to Marlene H. Dortch, Secretary, FCC, at 1 (Aug. 25, 2014) (“I see first-hand the benefits that Comcast offers our students and faculty. . . . JSUTV, on Comcast Cable Channel 14, offers local programming including Jackson State Football highlight shows, LaVale’s Show, Real 2 Reel, music performances, arts and humanities, community updates, news, and on-the-hour weather broadcasts.”).

<sup>160</sup> In addition, there is no basis to grant the LPTV Coalition’s demand for a comprehensive accounting of carried LPTVs and the terms of all leased access contracts and retransmission consent contracts for LPTV stations, especially given the Coalition’s admission that it wishes to obtain that information for an entirely different proceeding (the Incentive Spectrum Auction rulemaking).

<sup>161</sup> See Opposition and Response at 321 (“There can be no conceivable legal claim to carry all LPTV stations equally when even Congress has recognized that not all LPTV stations should be entitled to equal carriage. Comcast is free to enter into retransmission consent deals with some LPTV stations and not others based on its editorial discretion and business judgments, and its decision to do so does not suddenly create a compulsion to carry all

entities may arrange carriage where the cable provider has *not* chosen to offer their programming.<sup>162</sup>

And contrary to the LPTV Coalition’s assertion, Comcast’s selection of certain LPTV programming for its lineup is not the unlawful exercise of editorial control over LPTV programming in violation of 47 U.S.C. § 532(c)(2).<sup>163</sup> By its plain terms, that prohibition against editorial interference does not address arrangements with LPTVs that do not use leased access. Likewise, charging the Commission-permitted leased access rate to those LPTVs that do take advantage of the leased access rules is simply not an exercise of editorial control over their programming.<sup>164</sup>

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others.”). This conforms not only to the relevant provisions of the Communications Act, but also to the dictates of the First Amendment and the realities of the video marketplace. The Supreme Court long ago recognized that cable operators “are entitled to the protection of the speech and press provisions of the First Amendment.” *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) (“There can be no disagreement on an initial premise: Cable programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment. Through original programming or by exercising editorial discretion over which stations or programs to include in its repertoire, cable programmers and operators seek to communicate messages on a wide variety of topics and in a wide variety of formats.”) (citations and quotation marks omitted). And the need for cable operators to exercise editorial and business discretion has only increased as competition among MVPDs has intensified and the number of programmers seeking carriage has skyrocketed.

<sup>162</sup> Furthermore, in its 1997 Rate Order, the Commission made clear that “operators are permitted to differentiate with respect to price between one leased access programmer and another.” *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Leased Commercial Access*, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd. 5267 ¶ 24 (1997). And the FCC has applied the leased access rules to dismiss a complaint that a cable operator was charging leased-access providers different rates, because the “Act does not prohibit differences in charges for leased access channels,” so long as the maximum permitted rate is not exceeded. *Gruberg v. Time Warner Cable of New York City*, Memorandum Opinion and Order, 12 FCC Rcd. 4946 ¶ 10 (1997).

<sup>163</sup> “A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.” 47 U.S.C. § 532(c)(2).

<sup>164</sup> Comcast is aware of no foundation for the LPTV Coalition’s claim that cable MVPDs “demand that local jurisdictions not allow LPTV stations from airing [sic] local civic and educational content.” Letter from Mike Gravino, Director, LPTV Spectrum Rights Coalition, to Marlene H. Dortch, FCC, at 2 (Sept. 29, 2014). As far as Comcast is concerned, PEG programmers are welcome to use their programming however they see fit, including redistributing it over LPTV stations.

**6. Response to Discovery.**

Separate from formal comments and *ex partes*, certain parties have continued to mischaracterize the facts in public fora in the service of their own non-transaction-specific parochial and pecuniary interests. For example, in a recent investor conference, Discovery Communications' President and CEO David Zaslav stated the following, in the context of explaining Discovery's strategy of capturing increased subscriber fees in upcoming negotiations (including with Comcast):

When you have a very big player in a marketplace that has between 60% and 70% pass of high-speed broadband and has almost half of the cable homes it creates a real challenge for content investment for independent players. So we've been looking at Comcast because we think it raises – we've seen the challenges that it raises for consumers in terms of how pricing goes and we've seen if you take a look at investment in content by independent media companies in markets that have significant monopsony power you see that monopsony power coupled with significant broadband dominance in high speed usually does not end well or creates real challenges for consumer[s] and creates an ecosystem where the investment in content which is a very – it's a very compelling environment here that's provided a rich amount of content investment here in the US that it presents real challenges and that's what we're looking at. As the largest independent programmer in the US when we've seen what's happened in other markets it hasn't been a story that's ended well for consumers or for content investment.<sup>165</sup>

For a company that prides itself on being an authoritative source of non-fiction content, this parade of horrors is fanciful at best. Each substantive statement is demonstrably untrue.

**Fiction:** Discovery is “the largest independent programmer in the US.”

**Fact:** As an initial matter, Discovery continues to upend the term “independent programmer.” That term simply does not apply – legally or factually – to a company that is the seventh largest cable programmer in the United States by revenue (totaling nearly \$3 billion in 2013)<sup>166</sup> with dozens of content assets, and with substantial and increasing international scale (as

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<sup>165</sup> David Zaslav, President & CEO, Discovery Communications Inc., Remarks at the UBS Global Media and Communications Conference, Tr. at 16 (Dec. 9, 2014) (“Zaslav Transcript”).



reflected in its large market capitalization) – let alone one that is affiliated through ownership interests and board representation with *two* cable operators.<sup>167</sup>

**Fiction:** Comcast will have “almost half of the cable homes.”

**Fact:** Comcast does not now nor will it post-transaction serve “almost half of the cable homes” – not even close.<sup>168</sup> As discussed at length, after the Transaction, Comcast will manage cable systems serving less than 30 percent of MVPD customers, essentially the same levels that it served following the *AT&T Broadband* (2002) and *Adelphia* (2006) transactions.

Any claim that the combined company will exercise “monopsony” power at these levels and somehow drive down content investment flies in the face of the fact that there has been substantial content investment – by Discovery and many other programmers – during the period of time when Comcast had a comparable market share. Discovery is a perfect example: According to the Commission’s Annual Video Competition Reports, Discovery had ownership interests in 12 channels in 2003 (counting HD channels); by 2013, it owned 26.<sup>169</sup> Over the same period, Discovery’s total annual revenue grew from just under \$2 billion in 2003 to \$5.5

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<sup>166</sup> See SNL Kagan, Total Net Revenue by Network (2013).

<sup>167</sup> See Opposition and Response at 161 & n.501; see also Discovery Communications, Inc., Annual Report (Form 10-K), at 5 (Feb. 20, 2014), available at <http://ir.corporate.discovery.com/phoenix.zhtml?c=222412&p=irol-sec> (reporting that Discovery’s revenues for 2013 were \$3.0 billion).

<sup>168</sup> This assumes Mr. Zaslav meant “cable” in the common and ordinary course of “Pay TV” or “MVPD” customers – i.e., as in Discovery’s claim to be the “#1 Pay-TV Programmer in the World” – which of course is the appropriate (albeit narrow) framework for the Commission’s assessment of national programming buyer power concerns. To the extent Mr. Zaslav was making a claim about traditional cable systems specifically (i.e., MSOs), that is an insupportable limitation, particularly because Discovery is in the business of selling its programming to satellite and telco distributors (as well as OVDs).

<sup>169</sup> Compare Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, Tenth Annual Report, 19 FCC Rcd. 1606, Table C-1 (2004), with Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, Fifteenth Report, 28 FCC Rcd. 10496, Table B-2 (2013).

billion in 2013.<sup>170</sup> The claim also is contradicted by the fact that the D.C. Circuit has twice rejected the argument that a 30 percent MVPD market share creates monopsony power – and these holdings occurred at a time when the MVPD market was considerably less competitive than it is today.<sup>171</sup> Thus, claims of MVPD “monopsony” power simply do not withstand scrutiny.

**Fiction:** Comcast will be a “very big player in a marketplace that has between 60% and 70% pass of high-speed broadband.”

**Fact:** It is not clear what Mr. Zaslav is referring to, or why it would be particularly relevant to Discovery. If the “pass” of high-speed broadband means homes passed by Comcast post-transaction, it is no secret that the combined company will be poised to compete for broadband customers in the majority of the country – though still less of the country than four wireless broadband providers already do today and satellite broadband companies are capable of doing. But homes passed is not a valid measure of anything relevant in this Transaction, as Applicants explained in our Opposition and Response, and, if anything, the difference between Comcast’s homes passed and actual market share today shows that many of those who *could* order Comcast service decline to do so.<sup>172</sup> If Mr. Zaslav is instead referring to broadband customer shares that the combined company will have post-transaction, then his numbers are significantly inflated even at the arbitrarily high 25 Mbps threshold, as discussed above, and his concern is not transaction-specific. In any event, as articulated at length elsewhere, national

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<sup>170</sup> Compare Liberty Media Corporation, Annual Report (Form 10-K), at F-15 (Apr. 2004), available at <http://files.shareholder.com/downloads/ABEA-4CW8ZW/3737656791x0x466758/6BD7A156-79C0-42AD-9A24-D1735FC8F468/AnnualReport.pdf>, with Discovery Communications, Inc., Annual Report (Form 10-K), at 27 (Feb. 20, 2014), available at <http://ir.corporate.discovery.com/phoenix.zhtml?c=222412&p=irol-sec>.

<sup>171</sup> See *Comcast Corp. v. FCC*, 579 F.3d 1, 8 (D.C. Cir. 2009); see also *Time Warner Entm’t Co. v. FCC*, 240 F.3d 1126, 1136 (D.C. Cir. 2001).

<sup>172</sup> See Opposition and Response at 143-44.

broadband shares remain a red herring and unrelated to the question whether Comcast would have the incentive or any ability to foreclose a content provider like Discovery from reaching Comcast's broadband customers.

Finally, it bears emphasis that, in his remarks, Mr. Zaslav also discussed Discovery's recent content deal with Hulu and ongoing negotiations with Netflix<sup>173</sup> – each of these fast on the heels of Discovery signing a wide-ranging distribution deal with Sony's OVD service.<sup>174</sup> One of Discovery's questions in the single substantive *ex parte* letter it filed in this proceeding concerned whether Comcast could “interfere with the developing use of alternative content . . . services.”<sup>175</sup> By its own actions, Discovery provides further evidence that the answer to this question is clearly no and that the content distribution marketplace is much broader and even more dynamic than a narrow focus on MVPD (let alone “cable”) shares would indicate.

The fact of the matter is that Discovery's and other programmers' concerns are animated by the self-serving desire to misuse this transaction proceeding to achieve carriage terms that they could not reasonably hope to achieve in a highly competitive marketplace. The Commission should consider these motives in weighing the credibility of programmers seeking to impose conditions on the Transaction, which ultimately could impact consumers. Indeed, taking into account only the reasonably quantifiable carriage demands, contract negotiations, licensing fees, and other “asks” various programmers “proposed” to Comcast in connection with the Transaction, the demands would cost Comcast upwards of \$5 billion above any reasonable

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<sup>173</sup> See Zaslav Transcript at 1-5.

<sup>174</sup> See L. Stewart, *Puppies on Your PlayStation? Discovery Communications and Sony Network Entertainment International Announce Programming Distribution Deal*, Discovery Blog (Nov. 13, 2014), <http://corporate.discovery.com/blog/2014/11/13/puppies-on-your-playstation-discovery-communications-and-sony-network-entertainment-international-announce-programming-distribution-deal/>.

<sup>175</sup> See Letter from Catherine Carroll, VP – Public Policy & Corporate/Government Affairs, Discovery Communications, Inc., to Marlene H. Dortch, Secretary, FCC, at 1-2 (Sept. 4, 2014).

projection of its programming costs over the next few years – and could result in per-customer rate increases above \$4 per month.<sup>176</sup>

#### **IV. CONCLUSION**

For the reasons discussed above, nothing in the September 23 comments, nor in any of the subsequent comments, early-filed replies, or *ex parte* submissions to date, alters the weight of the record in this proceeding, and the continuing flow of supportive letters from leaders, companies, organizations, and others across America only serves to reinforce the affirmative case. An exhaustive record has been compiled that shows that the benefits of this Transaction are real and substantial and that opponents' claims of harm are based on speculation and flawed analysis. With the pleading cycle having now reached its conclusion, Applicants respectfully request that the Commission expeditiously approve the Applications.

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<sup>176</sup> See Opposition and Response at 149.

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Respectfully submitted,

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December 23, 2014

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# **EXHIBIT A**



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### KEY ISSUES RAISED BY OPPONENTS ARE WITHOUT MERIT AND ARE OVERWHELMINGLY OUTWEIGHED BY THE BENEFITS OF THE TRANSACTION

Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
<b>I. BENEFITS OF THE TRANSACTION</b>		
The purported benefits of the Transaction with respect to broadband deployment, investment, and adoption are overstated or fictitious.  (Cogent, Consumers Union et al., LA County et al., Netflix, WGAW et al.)	<ul style="list-style-type: none"> <li>• The Transaction will accelerate the deployment of advanced broadband services to the acquired systems, resulting in a fully upgraded network that delivers some of the industry's fastest broadband speeds.                             <ul style="list-style-type: none"> <li>◦ The Transaction will enable Comcast to surpass and accelerate existing TWC deployment plans and to upgrade the entire TWC service footprint, as well as the acquired Charter systems. Comcast has pledged to make substantial incremental investments – <i>hundreds of millions of dollars annually</i> – to TWC's planned upgrades and enhancements over the next three years to accelerate improvements to TWC's plant and facilities.</li> <li>◦ Comcast already has plans to invest significantly in capacity and network-related initiatives over the next three years; post-transaction, TWC's systems will be part of those plans (at appropriate incremental levels of investment). The company as a whole will be able to scale such investments more efficiently than TWC or Comcast could do individually.</li> <li>◦ The Transaction will generate efficiencies that will enable Comcast to deploy other network enhancements in the acquired systems that support future broadband needs for all customers (e.g., IPv6,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Public Interest Statement at 28-66.</li> <li>• Israel Decl. ¶¶ 161-201.</li> <li>• Rosston/Topper Decl. ¶¶ 41-114.</li> <li>• Angelakis Decl. ¶¶ 21-25.</li> <li>• Opposition at 2, 36-59, 90-91.</li> <li>• Israel Reply Decl. ¶¶ 172-179, 208-222 (noting that commenters' vague claims about the benefits of the Transaction provide no basis to reject the importance and likely realization of these benefits).</li> <li>• Rosston/Topper Reply Decl. ¶¶ 6-42.</li> </ul>

<sup>1</sup> The full names of commenters/petitioners that are abbreviated or identified by acronyms in this column are provided in Table A.

<sup>2</sup> The citations in this column are to Applicants' filings in MB Docket No. 14-57 and reflect the primary sources of the relevant responses. The full citations are provided in Table B.



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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<p>Converged Cable Access Platform ("CCAP"), DOCSIS 3.1).</p> <ul style="list-style-type: none"> <li>o Further, the Transaction will support deployment of more advanced in-home Wi-Fi equipment (capable of speeds up to 270 Mbps) and access to a more robust, ubiquitous Wi-Fi network across the combined company's footprint.</li> <li>• Comcast expects that the customers in all of the markets it acquires will have upgraded broadband networks – including higher broadband speeds and enhanced broadband services – within 36 months of the closing date of the TWC transaction and the exchange with Charter, and some markets may be fully upgraded within 12 months.</li> <li>• The Transaction will foster greater broadband competition and the virtuous cycle of innovation. <ul style="list-style-type: none"> <li>o The Transaction will spur other broadband providers to invest in and improve their networks and broadband offerings (e.g., AT&amp;T's expanded rollout of its high-speed fiber network), continuing the competitive leap-frogging that has characterized the commercial Internet's 20-year history.</li> <li>o Edge providers will be able to innovate and improve their services as the combined company enhances its broadband services, increasing the value of broadband for all end users. This, in turn, will create additional incentives for other ISPs to improve their own broadband services. Further, the Transaction will extend Comcast's Open Internet commitment to millions of additional customers in the acquired systems.</li> </ul> </li> <li>• The expansion of <i>Internet Essentials</i> to many new communities will increase broadband adoption and reduce the digital divide. <ul style="list-style-type: none"> <li>o The record reflects an overwhelming endorsement of <i>Internet</i></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Carlton Decl. ¶¶ 5-8.</li> <li>• Comcast Response to Information Request Nos. 50 (describing expanded eligibility for <i>Internet Essentials</i>); 80(a) (describing specific efficiencies expected to be realized as a result of the Transaction); 88(a) (describing expected timeline of migrating TWC and Charter customers to Comcast).</li> <li>• Nov. 19 Ex Parte at 2 (describing the benefits of the Transaction and, in particular, explaining Comcast's efforts to extend <i>Internet Essentials</i> program and noting record support for the program).</li> <li>• Nov. 26 Responses, Response to Question 6 at 7-9 (describing Transaction benefits, including, among others, greater access to Wi-Fi hotspots, improved network infrastructure, and technological advances like all-digital and faster broadband speeds and</li> </ul>

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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<p><i>Essentials</i> as a leading program for bridging the digital divide, with over 300 stakeholders highlighting the important benefits the program currently provides to 1.4 million Americans, from 350,000 families, and will provide to many more in the acquired areas.</p> <ul style="list-style-type: none"> <li>There is no equivalent program in any of the acquired systems and no question that its extension would advance the public interest.</li> <li>Although some parties criticize aspects of the program (and/or demand unreasonable alterations of it), they nonetheless acknowledge that it is a worthy and ambitious program unmatched by any other broadband provider. Many of the complaints are unfounded or patently unreasonable, and they do not negate the acknowledged benefits of this program. Nevertheless, Comcast is always interested in ways to improve <i>Internet Essentials</i>, and it has consistently done so.</li> </ul>	<p>providing a timeline of upgrades).</p> <ul style="list-style-type: none"> <li>Reply to Responses at 13-17.</li> </ul>
<p>The purported benefits of the Transaction with respect to video services will not be realized. (Dish, LA County et al., Netflix, Sen. Franken)</p>	<ul style="list-style-type: none"> <li>The Transaction will accelerate the deployment of advanced video products and services, including greater choices in video offerings (including the most advanced VOD and TVE experience). <ul style="list-style-type: none"> <li>This includes Comcast's approximately 55,000 VOD programming choices (compared to TWC's 15,000-20,000 and Charter's 10,000-12,000 in the systems to be acquired), and over 80 percent of these are available free of charge.</li> </ul> </li> <li>Customers in the acquired systems will enjoy numerous benefits from the migration of their current systems to all-digital. Comcast already upgraded 100 percent of its network to all-digital (two years ahead of schedule), while TWC has completed the transition in only 17 percent of its footprint.</li> <li>Comcast's digital transition, along with other technological improvements (e.g., faster deployment of DOCSIS 3.0-capable modems</li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 67-83.</li> <li>Rosston/Topper Decl. ¶¶ 41-114.</li> <li>Angelakis Decl. ¶¶ 26-29.</li> <li>Opposition at 59-67.</li> <li>Rosston/Topper Reply Decl. ¶¶ 6-42.</li> <li>Israel Reply Decl. ¶¶ 208-215, 219-222.</li> <li>Comcast Response to Information Request No. 54</li> </ul>



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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<p>and CCAP technology), has provided important consumer benefits. Given that experience and the synergies resulting from the Transaction, Comcast is well poised to accelerate the acquired systems' transition to all-digital, more smoothly and expeditiously, and with less customer disruption, than TWC could do alone.</p> <ul style="list-style-type: none"> <li>• Conversion of the acquired systems to all-digital will reclaim bandwidth necessary to support more programming and VOD choices, improved picture quality, and the rollout of advanced video features, which many TWC systems do not have the capacity to handle today. And Comcast has obtained more extensive programming rights and a significantly broader VOD and online catalog than other operators, including TWC.</li> <li>• The Transaction will bring Comcast's best-in-class X1 platform and IP cable technology to the acquired systems, benefitting customers and programmers alike. The X1 platform provides a state-of-the-art cloud-based user interface with integrated search capability, Internet access, and enhanced personalization, among other features. And Comcast's investments in IP-streaming technology will allow customers with the X1 platform to access their programming on personal computers and mobile devices. <ul style="list-style-type: none"> <li>o Economies of scale from the Transaction will allow Comcast to spread the costs of developing and deploying the X1 platform and future-related technology across more Comcast-owned systems, helping to support future innovation.</li> <li>o Although Comcast is exploring X1 license arrangements, the frictions that accompany the contracting process and the technological challenges associated with other operators' networks make that path far less certain and efficient.</li> </ul> </li> <li>• Some petitioners like Netflix and Dish attempt to cast these upgrades as</li> </ul>	<p>(describing plans to upgrade TWC and Charter systems' VOD services); 88(a) (describing expected timeline of migrating TWC and Charter customers to Comcast).</p> <ul style="list-style-type: none"> <li>• Nov. 26 Responses, Response to Question 6 at 4-5 (describing the roll-out of the full X1 product experience (including X1, full VOD, TVE apps, and EST) through TWC's footprint).</li> <li>• Reply to Responses at 17-18.</li> </ul>

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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<p>a competitive harm, perhaps because it presents competitive challenges to them, but there is no doubt that these are pro-consumer benefits that will be an improvement over current offerings and technologies.</p> <ul style="list-style-type: none"> <li>Based on the information Comcast has obtained so far, Comcast expects to roll out X1 throughout TWC's footprint, providing the full X1 product experience (X1, full VOD, TVE apps, and EST) in the first major markets within 12 months and all markets within [ ] months.</li> </ul>	
<p>The benefits to business customers are not obvious. (City of Los Angeles)</p>	<ul style="list-style-type: none"> <li>The Transaction will increase competition for businesses of all sizes by providing Comcast with the greater geographic scope necessary to offer seamless service options to more large and regional businesses, enterprise customers, and mobile carriers seeking wireless backhaul at lower costs. <ul style="list-style-type: none"> <li>Comcast and TWC have each made some inroads in serving business customers within their existing footprints (focusing primarily on small- and medium-sized businesses). But they currently are constrained by geographic limitations and lack of scale from competing more effectively against incumbent telco providers, particularly for larger regional and enterprise businesses whose operations span multiple areas and cable footprints.</li> <li>And although the companies have made some headway into the business services marketplace by partnering, these efforts have proven difficult, have been slow to gain steam, and are far less efficient than being able to offer a seamless, single-company offering.</li> <li>It is challenging for many large, multi-location businesses to justify choosing Comcast, because, in most cases, these businesses find it less burdensome and costly to work with a single-source telco provider that has both a large footprint and a demonstrated ability to</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 85-100.</li> <li>Rosston/Topper Decl. ¶¶ 41-83, 115-141.</li> <li>Israel Decl. ¶¶ 132-160.</li> <li>Angelakis Decl. ¶¶ 31-39.</li> <li>Opposition at 68-75.</li> <li>Rosston/Topper Reply Decl. ¶¶ 23-28.</li> <li>Israel Reply Decl. ¶¶ 216-217.</li> <li>Comcast Response to Information Request Nos. 76 (describing classes of business customers Comcast intends to serve post-transaction): 78 (describing Comcast-TWC [ ] and Comcast's plans to market business</li> </ul>



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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<p>deliver a unified offering to as many of their locations as possible.</p> <ul style="list-style-type: none"> <li>o The Transaction will substantially improve this competitive dynamic. It will enable Comcast to offer a unified set of seamless products and services to business customers throughout the combined company's expanded footprint with greater operational and cost efficiencies (by reducing the coordination problems, providing the benefits of "owner's economics" for more locations, and avoiding double marginalization associated with partnering with one or more other network providers to deliver services outside of the company's footprint), thereby allowing it to compete more effectively against incumbent telcos. And the reduction in marginal cost, including the elimination of double marginalization, will result in lower prices and improved service to business customers.</li> <li>o If Comcast's network covers a higher percentage of a potential customer's sites on its own network, Comcast will have both a greater incentive to bid for that company's business and a significantly improved chance to win the account.</li> <li>• Greater scale also will allow the company to undertake network infrastructure investments (e.g., deploying fiber and other high-capacity technology further into the network) that would not occur absent the Transaction. These infrastructure investments and improvements undertaken to service larger businesses will ultimately redound to the benefit of small businesses and residential customers as well.</li> <li>• The Transaction also will bring together the best of Comcast's and TWC's innovations in businesses services.</li> <li>• No parties have meaningfully challenged the clear benefits for business customers, and those that even address them casually dismiss these benefits out of hand without analysis.</li> </ul>	<p>services post-transaction); 80(a) (describing specific efficiencies expected to be realized as a result of the Transaction).</p> <ul style="list-style-type: none"> <li>• Nov. 26 Responses, Response to Question 6 at 4-7 (stating that the increased scale as a result of the Transaction will allow Comcast to invest in new products and services and improve its infrastructure and compete more effectively for business customers).</li> <li>• Dec. 5 Letter (providing concrete examples of multi-location businesses that Comcast would be in a better position to bid for and win as a result of the Transaction).</li> <li>• Dec. 15 TWC Ex Parte (describing constraints TWC has faced in serving multi-location businesses and the benefits of the Transaction for business customers).</li> <li>• Reply to Responses at 18-20.</li> </ul>



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<p>The Transaction will not result in efficiencies. (Cogent, Consumers Union et al., Free Press, LA County et al., WGAW et al.)</p>	<ul style="list-style-type: none"> <li>The operating efficiencies resulting from the Transaction with TWC will total approximately \$1.5 billion within three years, and will recur at or above this level each year thereafter. <ul style="list-style-type: none"> <li>The Transaction will reduce the aggregate amount of overhead currently spent by Comcast and TWC in many duplicative areas that are related to corporate staff and operational functions. By consolidating such functions and services within a single corporate management structure, the combined company should realize approximately {{ }} million in expense efficiencies for corporate and operational overhead over a three-year period.</li> <li>The integration of Comcast's and TWC's cable operations will also contribute to these operating efficiencies. Eliminating duplicative networks, assets and functions, and creating, for example, one backbone and one content delivery network, will yield approximately an additional {{ }} million in operating expense efficiencies over a three-year period.</li> </ul> </li> <li>The Transaction will create economies of scale at the national and regional levels, an expanded geographic reach, and a greater ability to share technologies and services – efficiencies that will drive the many public interest benefits of the Transaction. These efficiencies are not merely theoretical. Prior Comcast cable transactions (e.g., <i>Adelphia</i> and <i>AT&amp;T Broadband</i>) provided increased economies of scale that enabled Comcast to undertake larger fixed-cost investment in infrastructure and in providing advanced services, and this Transaction will do the same.</li> <li>Claims that Comcast and TWC could realize the same economies of scale or geographic reach by expanding within their current footprints disregard the plain business reality that it would be cost prohibitive to build new cable systems throughout each other's geographic footprint.</li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 23-28.</li> <li>Rosston/Topper Decl. ¶¶ 41-83.</li> <li>Israel Decl. ¶¶ 106-131.</li> <li>Angelakis Decl. ¶¶ 6-19.</li> <li>Opposition at 80-83.</li> <li>Israel Reply Decl. ¶¶ 216-221.</li> <li>Rosston/Topper Reply Decl. ¶¶ 6-22, 34-39.</li> <li>Carlton Decl. ¶¶ 5-8.</li> <li>Comcast Response to Information Request No. 80(a) (further describing specific efficiencies expected to be realized as a result of the Transaction).</li> <li>Nov. 26 Responses, Question 6 at 1-15 (same).</li> </ul>

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	<ul style="list-style-type: none"> <li>Moreover, the scale efficiencies from the Transaction are significant. The record includes examples of investments Comcast could not justify undertaking, or did not undertake as quickly, due to lack of sufficient scale, notwithstanding its size relative to other cable companies.               <ul style="list-style-type: none"> <li>Drs. Rosston and Topper provided several specific examples in their initial declaration, including: additional X1 features; investment in in-depth metadata tagging for video programming, which would make searching content easier for customers; and developing even more apps for more platforms.</li> </ul> </li> <li>Concerns about integration challenges are speculative, and ignore Comcast's track record and experience successfully integrating newly acquired systems in ways that benefit consumers.</li> </ul>	
<p>The NBCUniversal conditions are not adequate to protect the public interest.</p> <p>(Dish, ITTA, Netflix, NJ Rate Counsel/NASUCA, Public Knowledge et al., WGAW et al.)</p>	<ul style="list-style-type: none"> <li>Comcast consistently has met, and often exceeded, the more than 150 NBCUniversal conditions, including commitments relating to Open Internet protections, access to NBCUniversal programming, diversity, carriage of independent programming, and many others. Comcast's compliance with the NBCUniversal commitments is well documented in annual compliance reports.</li> <li>Expanding these commitments to the acquired systems means that millions of additional customers will benefit from protections, offerings, and opportunities that the FCC already has determined are in the public interest and that those customers did not enjoy before and would not have received otherwise. The Transaction is the "but-for" source of those benefits.</li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 106-20.</li> <li>Opposition at 83-105.</li> <li>Rosston/Topper Reply Decl. ¶¶ 111-120.</li> <li>Comcast Response to Information Request No. 52 (explaining how NBCUniversal conditions have been implemented by Comcast and incorporated into its business).</li> </ul>



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<b>II. MARKET DEFINITION</b>		
<p>The relevant geographic market for broadband is national.</p> <p>(Cogent, Dish, Netflix, Public Knowledge et al.)</p>	<ul style="list-style-type: none"> <li>The proper geographic market for broadband services is local, not national or even regional. Comcast and TWC are not direct competitors; they serve different, geographically distinct footprints and do not serve as substitutes for any consumers. The Transaction will not change the number of broadband choices available to consumers.</li> <li>There is no national market for broadband content distribution by edge providers. ISPs are not buyers of services from edge providers. Even in the interconnection context, Comcast and TWC are not substitutes, but are geographically separate.</li> <li>The FCC has consistently found that the relevant market for broadband is local. Commenters' reliance on <i>AT&amp;T-MediaOne</i> to assert a national market is entirely misplaced. In that proceeding, DOJ did not focus on the market for residential Internet access service but instead on a different (and now defunct) upstream market for providing "portal service" to ISPs. Further, neither DOJ nor the FCC made any effort to calculate the national market share of residential broadband customers, confirming that they did not analyze that market and that the metric is irrelevant to the competitive analysis.</li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 134-35.</li> <li>Israel Decl. ¶¶ 20-23, 42.</li> <li>Opposition at 113-21.</li> <li>Israel Reply Decl. ¶¶ 16-26.</li> <li>Carlton Decl. ¶ 9.</li> <li>Reply to Responses at 41-44.</li> </ul>
<p>The relevant product market should exclude DSL, mobile wireless, and other technologies that cannot compete with cable broadband.</p> <p>(CFA, Cogent, Dish, Free Press, Netflix, Public Knowledge et al., WGAW</p>	<ul style="list-style-type: none"> <li>Under well-established competitive analysis principles, the Transaction should be reviewed based on the current regulatory landscape – in which the FCC has defined broadband as 4 Mbps – within the mainstream of broadband connections in the country.</li> <li>While Applicants applaud the FCC's (and Chairman's) efforts to encourage more broadband providers to deploy speeds of and above 25 Mbps, this aspirational goal is a separate and fundamentally different proposition from whether consumers who use ISP services below that speed – speeds that nevertheless meet the FCC's current definition of</li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 42-56.</li> <li>Israel Decl. ¶¶ 40-68.</li> <li>Opposition at 21-22, 122-37.</li> <li>Israel Reply Decl. ¶¶ 10, 27-37, 67-88 (describing, among other things, the relevant</li> </ul>

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et al.)	<p>broadband – should be excluded from the competitive analysis of this Transaction. Clearly, these customers do use these services – including for online video – and should not be overlooked.</p> <ul style="list-style-type: none"> <li>• A definition that excludes broadband offerings at speeds below 10 Mbps or even 25 Mbps ignores current marketplace realities. <ul style="list-style-type: none"> <li>◦ Netflix has said 4 Mbps is sufficient to handle HD video; Hulu recommends a speed of 3 Mbps for HD video; Amazon Prime recommends a speed of 3.5 Mbps for HD video.</li> <li>◦ Sixty-one percent of households in the U.S. have only one or two occupants and, therefore, are well below the five simultaneous users per household that these commenters postulate in an attempt to justify 25 Mbps as the baseline speed.</li> </ul> </li> <li>• Excluding DSL, mobile wireless, and satellite broadband ignores current marketplace realities. <ul style="list-style-type: none"> <li>◦ As an initial matter, Netflix acknowledges that a significant share of its subscribers use DSL. In fact, 20 of the 60 providers on Netflix's November 2014 speed index <i>are DSL providers</i>, and the average speed of many of these DSL providers is <i>greater</i> than the average speed offered by some cable providers.</li> <li>◦ <i>The growth rate in DSL subscribership exceeded the growth rate in cable subscribership</i> between June 2009 and June 2013 (30.7 percent for DSL versus 17.9 percent for cable). At 10 Mbps, the difference in average annual growth rates is even more pronounced: 150.6 percent for DSL versus 52.8 percent for cable. Likewise, based on more recent Commission data, DSL subscribership grew 31 percent on average compared to 15.4 percent for cable between December 2009 and December 2013, and at 10 Mbps the average annual growth rate for DSL was 112.3 percent versus 51.9 percent</li> </ul> </li> </ul>	<p>market and the large and growing set of competitive broadband alternatives).</p> <ul style="list-style-type: none"> <li>• Comcast Response to Information Request Nos. 13 (identifying possible new entrants into provision of broadband services and requirements for entry); 74 (describing evidence that broadband subscribers would likely switch to alternative providers if their provider blocked certain content).</li> <li>• Reply to Responses at 44-50.</li> </ul>



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	<p>for cable.</p> <ul style="list-style-type: none"> <li>Continuing investments in DSL technology – including FTTN, IP-DSLAM, VDSL2, and pair bonding – have allowed upgraded DSL technologies to compete effectively against cable broadband, with many large DSL providers offering speeds between 18 Mbps and 45 Mbps. And DSL will only continue to improve as technology develops.</li> <li>Mobile wireless broadband is primed to become a formidable competitor and is capable of delivering speeds well over 50 Mbps (and averaging in the double digits).</li> <li>Video is the largest and fastest growing segment of mobile data traffic, and is expected to account for over 50 percent of all global mobile data traffic by 2019. Continuing recent trends of declining prices to consumers, wireless providers' costs are expected to fall precipitously over the next several years, which will further increase the competitive dynamics between wireless and wireline offerings.</li> <li>Many of Comcast's competitors recognize the marketplace opportunity for wireless broadband. The record shows that a significant share of consumers <i>already</i> view wireless as a satisfactory substitute to fixed broadband. For example, in a recent survey of over 1,000 broadband users conducted by Global Strategy Group ("GSG"), 42 percent of respondents indicated that they use mobile wireless broadband at least as much as wired broadband for high bandwidth activities, and 60 percent or more use mobile wireless broadband at least as much as wired broadband for low bandwidth activities.</li> <li>Any assessment of broadband availability must therefore consider mobile wireless, as the FCC's own data shows that 98 percent of Americans have access to wireless broadband speeds over 3 Mbps</li> </ul>	

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	<p>and 97.5 percent have access to wireless broadband speeds exceeding 10 Mbps.</p> <ul style="list-style-type: none"> <li>○ Other competitive technologies are proliferating. Google is deploying a competitive 1 Gbps fiber network, satellite broadband can already deliver broadband download speeds of 15 Mbps and those capabilities are improving, and Comcast and TWC face competition from overbuilders as well.</li> <li>● Whether or not a service is a “substitute” may depend on many attributes, not just speed. The survey conducted by GSG on which Dr. Israel relied shows consumers’ willingness to switch ISPs in the event an ISP were to block or degrade access to content the consumers wished to reach, even where the alternative provider was not an equally fast fixed broadband ISP. In fact, consumers can and do switch their ISP – including to ISPs with <i>slower speeds</i> – for various reasons, such as better pricing, moving residences, and the availability of other services.</li> <li>○ The GSG survey also found that consumers <i>frequently</i> switch broadband providers – <i>one-third</i> of survey respondents switched providers in at least the past two years, and nearly <i>one-half</i> switched providers within the past four years.</li> <li>○ These results are consistent with the results of a 2010 FCC survey, finding that over the prior three years 36 percent of Internet users indicated that they had switched their ISP.</li> <li>○ Comcast’s policies do not make it difficult to switch to another ISP. Less than [ ] percent of Comcast’s current residential broadband subscribers are subject to a contractual commitment. Thus, over [ ] percent of its customers would face no early termination fees for switching. Indeed, many of Comcast’s customers avail themselves of the opportunity to switch providers. Comcast’s monthly broadband</li> </ul>	



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<p>The relevant MVPD market should be limited to bundled video and broadband offerings rather than standalone video. (Hawaiian Telcom, RCN et al., WGAW et al.)</p>	<p>churn rate for broadband subscribers has been in the {} percent range for several years. Put differently, over the course of a single year, approximately {} of Comcast's broadband subscribers churn.</p> <ul style="list-style-type: none"> <li>These arguments are irrelevant to the analysis of the Transaction, which will not reduce competition in any relevant market even if DBS providers were improperly excluded. Comcast and TWC do not compete for customers but instead offer services in separate local markets. That is true even if the market were deemed to include only bundled offerings: consumers will have the same number of choices for bundles in <i>every relevant market</i>.</li> <li>The notion that the MVPD market should be defined as bundled video and broadband offerings – thus excluding DBS – belies reality and conflicts with longstanding FCC precedent. <ul style="list-style-type: none"> <li>Regulators have never recognized double- and triple-play bundles offered by a single provider as a relevant product market, separate from bundles created by separate providers or consumers.</li> <li>Bundles are inappropriate product markets because such markets leave out viable substitutes; namely, standalone video, Internet, and telephone services purchased from separate providers.</li> </ul> </li> <li>The FCC has stated that the relevant market for video programming is all MVPD services, including DBS services, and it rejected the argument that DBS providers should be excluded because they do not offer their own triple-play bundle. It is absurd to suggest that the relevant product market should now change on the theory that DBS providers cannot compete with cable providers' bundles. Such a theory is belied by marketplace facts. <ul style="list-style-type: none"> <li>DBS providers and other video providers have been enormously</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Opposition at 137-43.</li> <li>Rosston/Topper Reply Decl. ¶ 44.</li> </ul>

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	<p>successful in competing with cable providers. DBS providers added 9 million subscribers between 2004 and 2013, and cable providers <i>lost</i> over 7 million customers since 2009.</p> <ul style="list-style-type: none"> <li>DBS providers now have approximately 34 million customers who take multichannel video from them and voice and/or data from someone else. Because Comcast offers broadband on a standalone basis, DBS customers can create their own bundle using Comcast Internet and voice services and DBS video services. And DBS providers can and do enter arrangements with ILECs to provide double-play and triple-play offerings.</li> </ul>	
<p style="text-align: center;"><b>III. HORIZONTAL COMPETITION</b></p> <p>The Transaction will reduce broadband competition.</p> <p>(Cogent, Consumers Union et al., Consumer Watchdog, Dish, Free Press, Netflix, Public Knowledge et al.)</p>		
	<ul style="list-style-type: none"> <li>Applicants do not compete with one another for broadband customers and do not serve as substitutes <i>for any customers</i>. Therefore, there will be no reduction in the number of broadband competitors in <i>any</i> market. <ul style="list-style-type: none"> <li>Commenters' inflated calculations of Comcast's post-transaction national share are not relevant to the analysis of the Transaction's competitive effects. As noted above, there is no relevant national "market" for broadband access.</li> <li>Regardless, Comcast's post-transaction share of the putative national "market" will be nowhere near as high as the 50 percent or greater figures claimed by certain commenters. Based on the most recent FCC data as of December 2013 and the FCC's current applicable definition of broadband service, Comcast's post-transaction share of fixed broadband connections will be 37 percent (after divestitures), and will be as low as 13.7 percent when mobile broadband connections are considered.</li> <li>Even if one were to ignore the record evidence and assume a national</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 138, 141.</li> <li>Israel Decl. ¶¶ 19-25, 161-166.</li> <li>Opposition at 144-49.</li> <li>Israel Reply Decl. ¶¶ 9, 27, 37-38, 67-88, 95-98, 210-211.</li> <li>Carlton Decl. ¶¶ 4, 7, 9.</li> <li>Reply to Responses at 5-7, 44, Exhibit B.</li> </ul>



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	<p>broadband “market” with a baseline speed of 10 or 25 Mbps, the Transaction still presents no competitive issues.</p> <ul style="list-style-type: none"> <li>▪ At a 10 Mbps threshold, the combined company’s share after divestitures will be 42.1 percent of fixed connections and 22.2 percent of fixed and wireless connections (an increase of approximately 12 percent and 7 percent, respectively).</li> <li>▪ And at a 25 Mbps threshold, the combined company’s broadband share would increase <i>by only one percent</i>. Such a <i>de minimis</i> increase provides no basis to allege any transaction-specific harm.</li> </ul> <ul style="list-style-type: none"> <li>• The Transaction will not harm competition in business broadband services, because Comcast and TWC do not overlap to any material degree and, to the extent they supply the same business customers, they generally do so as complements – with Comcast providing services within its footprint and TWC providing services within its footprint – rather than as substitutes. In fact, the significant efficiency gains produced by the Transaction will bring more competition and more reliable services to business customers, especially those with multiple offices throughout the combined company’s region.</li> <li>• Nor will the combination of Comcast’s and TWC’s backbone network facilities create any horizontal concerns. The FCC has found that the market for peering and transit is highly competitive. And, as discussed further below, there are dozens of settlement-free paths offering transit into Comcast’s network along with many other CDN and paid transit paths.</li> </ul>	
The Transaction will harm the market for video programming.	<ul style="list-style-type: none"> <li>• Comcast’s increased scale as a buyer of programming will not result in any competitive harm.</li> <li>• Contrary to certain commenters’ claims, monopsony power is not a</li> </ul>	<ul style="list-style-type: none"> <li>• Public Interest Statement at 143-54.</li> <li>• Rosston/Topper Decl. ¶¶ 22-</li> </ul>



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<p>(AAL, ACA, Beach TV, CBET, CBM, CenturyLink, CFA, Cogent, Discovery, Dish, Entravision, Frontier, Hargray, Hawaiian Telcom, IFTA, ITTA, LA County et al., LPTV Coalition, My Christian TV, NTCA, Public Knowledge et al., RCN et al., Sinclair, Sports Fans, Tennis Channel, TVC, WGAW et al.)</p>	<p>relevant concept for this Transaction.</p> <ul style="list-style-type: none"> <li>o Comcast and TWC do not “compete” today to purchase video programming, both because programming is what is called a “non-rivalrous good” – meaning that one firm’s purchase of it has no effect on the amount of programming available for sale to other firms – and because Comcast and TWC do not compete for the same video customers.</li> <li>o The combined company will be one of many buyers of video programming. In fact, the combined company’s share of national MVPD subscribers will be just below 30 percent – a level: (i) that the D.C. Circuit twice concluded (in eras when there was far less competition among MVPDs) did not confer a cable company with power to determine the viability of unaffiliated programming networks and (ii) that is approximately the same share Comcast had following the <i>AT&amp;T Broadband</i> and <i>Adelphia</i> transactions that the FCC previously approved.</li> <li>o Post-transaction, the combined company will face the same tremendous competitive pressures from MVPD and OVD rivals that Comcast, TWC, and Charter do today, and Comcast will need to deliver the best programming available to its customers.</li> <li>o Further, because programming providers will have the same distribution options in any given area post-transaction that they have today, the increase in Comcast’s subscriber base is unlikely to have a meaningful impact on its bargaining power.</li> <li>• The Transaction is unlikely to affect the relative bargaining position of Comcast and programmers.</li> <li>o Because Comcast and TWC do not compete for customers, Comcast will face the same (if not more, since it will have more customers to</li> </ul>	<p>27, 171, 174-198, 202-205.</p> <ul style="list-style-type: none"> <li>• Opposition at 150-76.</li> <li>• Israel Reply Decl. ¶ 158.</li> <li>• Rosston/Topper Reply Decl. ¶¶ 49, 51-56, 63, 70-78, 192-205.</li> <li>• Comcast Response to Information Request: <ul style="list-style-type: none"> <li>o No. 15 (explaining that programmers have multiple avenues for distribution);</li> <li>o No. 23 (describing impact of Transaction on critical departure rates for permanent and temporary foreclosure of programming, and noting no evidence the Transaction raises program access foreclosure concerns);</li> <li>o No. 24 (describing impact of Transaction on prices of Comcast-affiliated programming);</li> <li>o No. 25 (demonstrating</li> </ul> </li> </ul>



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	<p>lose) risk post-transaction of losing subscribers to competitors if it does not carry programming as it does today.</p> <ul style="list-style-type: none"> <li>○ It is unlikely that an already large MVPD like Comcast will gain significant bargaining power by getting somewhat larger. In fact, the relative size differences between Comcast and TWC do not matter much in terms of ability to achieve favorable pricing. Major price differentials appear to be flattening out with the industry moving toward more standard pricing.</li> <li>○ If anything, programmers with valuable content have significant bargaining power of their own, as reflected by the fact that programming costs have outstripped inflation and outpaced increases in Comcast cable prices, as well as average cable retail prices.</li> <li>○ The Transaction may increase the stakes for Comcast of losing access to content – i.e. Comcast will have more customers to lose if it is unable to come to a mutually acceptable deal with programmers.</li> <li>• Comcast alone will not be able to determine the viability of programming networks. Post-transaction, programmers will continue to have many outlets other than Comcast, including OVDs. For MVPD distribution alone, programmers will have the opportunity to be distributed to more than 70 million subscribers through MVPDs other than Comcast, a share of the market that the FCC has repeatedly made clear ensures programmers can launch and remain viable.</li> <li>○ The Transaction will not undermine independent and diverse programming. Comcast carries over 160 independent networks under the FCC's definition and has launched or expanded the carriage of 141 independent networks by more than 217 million customers, collectively, since 2011. Post-transaction, six out of seven networks that Comcast carries will continue to be unaffiliated.</li> </ul>	<p>lack of evidence that Comcast favors its affiliated programming);</p> <ul style="list-style-type: none"> <li>○ No. 30 (describing Comcast's program carriage decision factors);</li> <li>○ No. 82 (describing general rise in programming costs and impact of NBCUniversal transaction in countering such increases).</li> <li>• Oct. 16 Program Carriage Ex Parte at 2-6 (detailing growing programmer leverage and noting procompetitive effects of MFNs and the limitations on ADM provisions under the <i>NBCUniversal Order</i>).</li> <li>• Nov. 26 Responses, Question 1 at 1-4, 10-11 (explaining that Comcast's larger subscriber base will not give it an enhanced incentive to engage in exclusionary conduct toward actual or potential video distribution rivals); Question 2 at 1-8 (further detailing why a larger</li> </ul>



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	<ul style="list-style-type: none"> <li>• There is no merit to the claim that Comcast will create a bottleneck for national programmers in the top 20 DMAs. DMAs are simply Nielsen constructs for rating measurement purposes; they are not relevant competitive markets for MVPD services. Nevertheless, following the Divestiture Transactions, Comcast will operate in 16 of the top 20 DMAs, the same number that Comcast operates in today (although the makeup of those DMAs will differ slightly).</li> <li>• The Transaction will not lead to higher programming costs for other MVPDs. There is no basis in economics to conclude that, because a programmer makes additional price and terms concessions to one distributor, it will suddenly have the ability to extract more aggressive terms and conditions from other distributors. There is no reason to assume that programmers are leaving money on the table when negotiating with MVPDs; programmers negotiate for the highest rates the market will bear from every single MVPD.</li> <li>• The Transaction will not give Comcast greater incentive and ability to enter into MFN and ADM provisions that harm programmers, MVPDs, or OVDs. <ul style="list-style-type: none"> <li>◦ MFNs are generally considered pro-competitive and pro-consumer and are the product of intense negotiation between sophisticated parties. MFNs allow Comcast's relationships with networks to reflect new technology or marketplace developments without having to inefficiently negotiate every new issue prior to renewal discussions, providing customers earlier access to functionality and content they might not otherwise have. MFNs also give Comcast the confidence to enter long-term arrangements with new or fledgling networks, giving networks the benefit of rate and carriage certainty and protecting Comcast from overpaying for programming before the marketplace settles on the right price or the networks settle on what rights it may</li> </ul> </li> </ul>	<p>subscriber base will not give Comcast increased bargaining leverage vis-à-vis programmers); Question 5 at 1-12 (refuting claims that provisions in Comcast's programming contracts, including MFNs and ADMs, make it more difficult for OVDs and MVPDs to obtain content on favorable terms).</p> <ul style="list-style-type: none"> <li>• Reply to Responses at 8-10, 64-67.</li> </ul>

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	<p>confer for VOD, TVE, etc.</p> <ul style="list-style-type: none"> <li>○ Although MFN terms vary, Comcast MFNs are not implicated when a network (or related studio) enters into a licensing deal with an OVD for discrete content, or even for a substantial amount of library content. With regard to reported licensing deals between programmers and “multichannel” OVDs for live linear content, Comcast understands that programmers have chosen not to license certain content for business reasons, not because of MFNs.</li> <li>○ As for ADM provisions, there is simply no marketplace evidence that restrictive ADM provisions have materially hampered the willingness of programmers or the ability of OVDs to license content. Comcast’s prevailing goal in negotiations is to unlock the rights to more content in more windows on more platforms, not to restrict content from being made available on alternative platforms. To the extent there are concerns in this area, these are industry-wide practices, and Comcast is not the source of restrictive provisions. Furthermore, Comcast has expressly acknowledged that the MFN and ADM limitations contained in the <i>NBCUniversal Order</i> will apply to the acquired systems, which answers any transaction-specific theory of harm.</li> <li>• The Transaction will not materially increase the amount of programming controlled by the combined company. <ul style="list-style-type: none"> <li>○ There will be no change in the concentration of ownership of national networks as a result of the Transaction.</li> <li>○ The combined ownership of an RSN and an NBC O&amp;O in Los Angeles poses no competitive harm. They carry different types of programming and, as such, are not considered close substitutes. And under the FCC’s own models, the combined ownership will have no significant effect on prices.</li> </ul> </li> </ul>	



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	<ul style="list-style-type: none"> <li>• The Transaction will not lead to a reduction in competition for sports programming, nor will Comcast “control” any relevant market for sports programming.               <ul style="list-style-type: none"> <li>◦ Comcast will gain ownership of only one major additional English-language RSN featuring major professional league sports. The Transaction will not result in the combined company having a greater share of RSN programming than Comcast or TWC already has in any RSN footprint and, therefore, will not change the competitive dynamics relating to RSN distribution.</li> <li>◦ Far from the Transaction affording Comcast a dominant position in RSN sports programming, Fox will continue to control many more major league professional RSNs across the country than Comcast.</li> </ul> </li> <li>• Comcast’s acquisition of TWC local channels will not harm independent news voices, where both traditional news providers and the Internet-driven proliferation of electronic outlets assure the continued growth of a multiplicity of voices disseminating news, information, and commentary on all manner of events and developments.</li> <li>• There is no credible claim that the Transaction will harm religious broadcast programming. Many religious programmers have must-carry status. To the extent Comcast has the right to elect to carry these stations, Comcast is committed to meeting the needs of its diverse customers and will continue to exercise editorial judgment about which channels its customers want.</li> <li>• Comcast is a well-recognized supporter of the low-power television (“LPTV”) community. Nevertheless, some LPTV stations are attempting to use this transaction proceeding to obtain more favorable carriage on Comcast’s cable systems than they would otherwise be able to obtain in the marketplace or (if desired) via leased access, and claim without basis</li> </ul>	

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	<p>in law or policy that Comcast is “discriminating” among LPTV stations because it has retransmission consent agreements with some LPTV stations but not others. However, there is no legal obligation to reach retransmission arrangements with any of these LPTV providers. Comcast is free to enter into retransmission consent agreements with some LPTV stations and not others based on its editorial discretion and business judgment, and its decision to do so does not create a compulsion to carry others.</p>	
<p>The Transaction will reduce video distribution competition. (ITTA, Los Angeles County et al., Sen. Franken)</p>	<ul style="list-style-type: none"> <li>• There will be no reduction in the number of video competitors in any market. <ul style="list-style-type: none"> <li>◦ As of 2011, 98.6 percent of homes had access to at least three MVPDs, and 35.3 percent had access to at least four. Comcast will continue to face the same multichannel competition in each and every geographic area after the Transaction as Comcast and TWC face now.</li> <li>◦ Even looking at just the Top 20 DMAs, there will be <i>11 or more</i> MVPDs in most of the DMAs where the combined company will have a presence and at least seven MVPDs in all of them.</li> <li>◦ The video marketplace continues to become even more competitive, with cable losing market share both to well-established and new competitors. These competitive conditions will not change as a result of the Transaction.</li> </ul> </li> <li>• Nor will there be a reduction in the number of potential video distributors, because Comcast and TWC have not seen it economical to build new cable systems outside their franchise areas and therefore are also not potential competitors.</li> </ul>	<ul style="list-style-type: none"> <li>• Public Interest Statement at 138, 140.</li> <li>• Rosston/Topper Decl. ¶¶ 32, 170-173.</li> <li>• Opposition at 176-78.</li> <li>• Israel Reply Decl. ¶ 14, 203-207.</li> <li>• Rosston/Topper Reply Decl. ¶¶ 43-44.</li> </ul>



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<p>The Transaction will reduce voice competition.</p> <p>(Public Knowledge et al., COMPTTEL, Maine RLECs, CenturyLink)</p>	<ul style="list-style-type: none"> <li>• There will be no reduction in the number of voice competitors in any market.</li> <li>• Wholesale inputs will continue to be available from several sources. And Comcast already has agreed to extend the existing wholesale business services arrangements that TWC has established.</li> <li>• The Transaction will not disrupt voice interconnection arrangements.</li> <li>• Following the Transaction, the TWC operating entities that currently provide Lifeline service today will remain in place and will retain their status as regulated telephone utilities and designations as eligible telecommunications carriers.</li> </ul>	<ul style="list-style-type: none"> <li>• Public Interest Statement at 138, 142-43.</li> <li>• Opposition at 67-68, 191-94, 312.</li> </ul>
<p>The Transaction will reduce competition in the equipment marketplace, foreclose access to OTT apps, and harm small operators.</p> <p>(COMPTTEL, Consumers Union et al., LA County et al., Netflix, Public Knowledge et al., RCN et al., WGAW et al.)</p>	<ul style="list-style-type: none"> <li>• The Transaction will enable customers to access more programming, in more places, on more devices than ever before. <ul style="list-style-type: none"> <li>◦ Comcast is an industry leader in enabling consumers to access cable services on retail devices and has a strong record of supporting retail CableCARD-enabled devices in its cable systems.</li> <li>◦ Comcast focuses on bringing consumers the best video experience and on expanding choice rather than limiting it.</li> <li>◦ Comcast is increasing ways to access authenticated programming services on customer-owned devices, as evidenced by the recent announcement that Comcast customers can now access HBO Go and Showtime Anytime apps on their Roku players. Comcast provides authentication services for more than 90 network apps on up to 17 different devices.</li> </ul> </li> <li>• Comcast's X1 platform gives customers unmatched interactive TV functionality, including a state-of-the-art user interface and other product features that revolutionize customers' viewing experiences. Comcast has made a substantial investment to develop the platform, and is now</li> </ul>	<ul style="list-style-type: none"> <li>• Opposition at 178-91.</li> <li>• Israel Reply Decl. ¶ 214.</li> <li>• Comcast Response to Information Request Nos. 40-44 (describing Comcast's efforts to develop, implement, and license new equipment and technologies, including X1 platform and TVE services).</li> <li>• Oct. 27 Equipment Ex Parte at 2-6 (describing Comcast's record of support for customer-owned devices).</li> <li>• Nov. 26 Responses, Question 4 at 1-6 (explaining that Comcast is expanding and</li> </ul>



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	<p>offering X1-enabled services across its footprint.</p> <ul style="list-style-type: none"> <li>o The X1 platform does not impede access to OTT video on third-party devices. The X1-capable box is no different vis-à-vis customers' access to third-party devices and OTT video on such devices than any other set-top box; it can be plugged into any of the millions of connected TV devices in the market.</li> <li>o Including authenticated TVE programmer apps on the X1 platform would be redundant. Comcast only authenticates the apps of programmers whose programming it carries as an MVPD. Thus, a customer using an X1-capable set-top box already receives all of the Comcast cable service programming to which she or he subscribes on that box, which would make the inclusion of TVE apps offering the very same programming superfluous.</li> <li>o There is no reason to compel Comcast to accept <i>any</i> party's OTT app on its X1-capable boxes when Roku, Apple TV, and others have no such obligations for their millions of already-deployed devices, and instead are free to negotiate whatever deals they choose.</li> <li>• Comcast strongly supports the availability of TVE on customer-owned devices and provides authentication services for a number of program networks on different device platforms. The Xfinity TV Go app, for example, is available on iOS and Android smartphones and tablets and Kindle Fire.</li> <li>• Comcast will not be able to limit device options for competing MVPDs, which can choose from an abundance of potential set-top box suppliers and Internet-connected devices in the global market. In fact, Comcast is an active participant in many standards-setting bodies which play an important role in developing technologies that are widely used in cable set-top boxes and is also active in numerous open source software</li> </ul>	<p>streamlining customer access to TVE services on customer-owned devices and that the X1 platform does not exclude third-party devices or apps).</p> <ul style="list-style-type: none"> <li>• Comcast/Roku Blog Post (announcing authentication for HBO Go and Showtime Apps on Roku players for Comcast customers).</li> <li>• Reply to Responses at 11.</li> </ul>

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	<p>initiatives.</p> <ul style="list-style-type: none"> <li>Comcast has no ability or incentive to restrict access to DOCSIS 3.1 technology or equipment.</li> <li>Comcast has accelerated the introduction of new and innovative technologies benefitting smaller operators, including the digital transport adapter and the Reference Design Kit ("RDK") platform. RDK is made available on a free, shared-source license and has over 200 licensees, and its development is benefitting cable operators across the industry, including smaller cable operators.</li> </ul>	
<p>The Divestiture Transactions will not mitigate the Transaction's competitive harms.</p> <p>(CBM, Common Cause, Frontier, ITTA)</p>	<ul style="list-style-type: none"> <li>The Transaction will increase efficiencies through increased geographic rationalization, generating economies of scale at the regional level that will produce numerous public interest benefits.</li> <li>Post-transaction, programmers will have a new MVPD (GreatLand Connections) that will not be controlled or managed in any way by Comcast.</li> </ul>	<ul style="list-style-type: none"> <li>Israel Decl. ¶ 42.</li> <li>Opposition at 27-30, 43, 166.</li> <li>Rosston/Topper Decl. ¶ 31.</li> <li>Comcast Response to Information Request No. 80 (describing efficiencies and synergies expected to result from the divestitures).</li> <li>Nov. 26 Responses, Question 6 at 9-11 (providing examples of how the divestitures will generate additional efficiencies, including enhanced geographic rationalization).</li> </ul>



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<p style="text-align: center;"><b>IV. VERTICAL COMPETITION</b></p>		
<p>Comcast has an incentive to degrade access to OVDs.</p> <p>(CFA, Cogent, Dish, Free Press, Netflix, Public Knowledge et al.)</p>	<ul style="list-style-type: none"> <li>Given the complementary relationship between OVDs and Comcast's broadband business, Comcast will have no incentive to block or degrade access to Internet content from OVDs. Comcast needs edge providers to offer attractive content, applications, and services so that existing and new Internet customers continue to demand Comcast's high-growth broadband service. OVDs have also become significant purchasers of NBCUniversal content.               <ul style="list-style-type: none"> <li>Any strategy to degrade or foreclose edge provider content would harm Comcast's broadband business more than it supposedly would benefit its MVPD business, because broadband subscribers likely would switch to Comcast's ISP competitors or downgrade from/forego upgrading to Comcast's higher broadband tiers. Indeed, over the course of a single year, approximately {} of Comcast's broadband subscribers churn. And Comcast has no policies designed to create high bars to switching, given that {} percent of its residential broadband customers are not contractually bound, and thus have no early termination fees. Comcast also facilitates free mail-in return of modem equipment.</li> <li>And doing so would likely encourage further entry by competitors like Google, whose fiber buildout reflects its vested interest in maintaining competitive broadband markets to support its huge edge provider business.</li> <li>Nor would Comcast have any assurance that dissatisfied OVD customers would turn to Comcast's video service – which does not offer the same programming available from OVDs – rather than one of Comcast's competitors, including telco, DBS, and cable/fiber overbuilders.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 156-64.</li> <li>Israel Decl. ¶¶ 14, 31, 36-39 83-87.</li> <li>Opposition at 47-50, 197-99, 200-07, 214-16.</li> <li>Israel Reply Decl. ¶¶ 9, 39, 44-49, 56-63</li> <li>Carlton Decl. ¶¶ 11, 14-15.</li> <li>Comcast Response to Information Request No. 74 (describing in detail how harming edge providers would harm Comcast's Internet access service business).</li> <li>Nov. 12 Ex Parte at 2-3 (emphasizing that Comcast does not have an economic incentive to harm OVDs and explaining that empirical evidence indicates that it has no ability to do so).</li> <li>Nov. 26 Responses, Question 1 at 4-5 (explaining the implausibility of Comcast</li> </ul>

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		<p>harming OVDs), 11-21 (refuting the claim that the Transaction would give Comcast an enhanced incentive to degrade or block OVD access); Question 3 at 16-17 (noting that edge providers enhance the value of Comcast's broadband and content businesses).</p> <ul style="list-style-type: none"> <li>Dec. 3 Letter Attachment at 9-16 (explaining why alternative theories of foreclosure do not alter analysis that Comcast lacks any incentive to foreclose OVDs).</li> <li>Reply to Responses at 54-61.</li> </ul>
<p>The combined company will have an enhanced ability to foreclose OVDs and edge providers.</p> <p>(CFA, Cogent, Dish, Free Press, Netflix, Public Knowledge et al.)</p>	<ul style="list-style-type: none"> <li>The Transaction does nothing to increase the combined company's ability to foreclose OVDs or edge providers – either over Comcast's "last-mile" network or at the point of interconnection. <ul style="list-style-type: none"> <li>Comcast will not be able to foreclose at interconnection points to the network or force edge providers into direct interconnection relationships/paid-peering arrangements. There are dozens of settlement-free routes into Comcast's network, as well as many other substantial commercial peering and transit connections with CDNs and ISPs that are used by edge providers (or their transit agents) without any direct interconnection with Comcast.</li> <li>The wide range of interconnection options for providers means that no</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 156-64.</li> <li>Israel Decl. ¶¶ 14, 32-33, 40-47, 78-87.</li> <li>Opposition at 47-50, 197-98, 208-30.</li> <li>Israel Reply Decl. ¶¶ 10-11, 44-49, 53, 126-129.</li> <li>McElearney Decl. ¶¶ 3-8, 23-24, 37-41.</li> </ul>



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	<p>edge provider is required to negotiate directly with Comcast to access its network.</p> <ul style="list-style-type: none"> <li>o And in the porous, interconnected, and highly redundant Internet ecosystem, no provider can effectively exercise a “monopoly” on terminating traffic to its network without undermining its own connectivity.</li> <li>o Where certain edge providers such as Netflix are sufficiently large and choose to invest in their own CDNs and then negotiate directly with ISPs for interconnection, the terms they have reached have not proven harmful, but rather have represented mutually beneficial disintermediation.</li> <li>o Comcast has not allowed its interconnection links to become congested. The congestion issues that arose in connection with Netflix’s traffic arose because Netflix chose, without warning and in its sole discretion, to use only three routes that were connected to Comcast’s network for traffic loads beyond what those routes could handle.</li> <li>o Comcast’s experience with Netflix illustrates how an edge provider can affect an ISP’s business through the edge provider’s traffic routing choices. Complaints received by customers and reports in the press make it clear that many customers blamed Comcast for performance issues related to congestion of Cogent’s pipes.</li> <li>o Even if the combined company could somehow block OVD access to its network, the Transaction poses no conceivable threat to OVDs’ ability to survive and flourish. Even without access to the combined company’s customers, OVDs would have an open field of 64-84 percent of broadband subscribers across the country (at 10 Mbps, the open field would be 60-77 percent). The combined company’s</li> </ul>	<ul style="list-style-type: none"> <li>• Dovrolis Decl. at 5-6, 12-21.</li> <li>• Comcast Response to Information Request: <ul style="list-style-type: none"> <li>o No. 60 (explaining Comcast’s network management practices), 65-66 (outlining service level commitments offered to OVDs and identifying settlement-free routes into Comcast’s network).</li> <li>o Nos. 68-69 (describing Comcast’s CDN service and Comcast’s process for evaluating compliance of settlement-free peer relationships with Comcast’s settlement-free interconnection policy).</li> <li>o Nos. 72-73 (describing how Comcast adjusts capacity of its interconnection links and identifying specific instances of such adjustments).</li> </ul> </li> <li>• Nov. 3 Traffic Exchange Ex Parte (describing the</li> </ul>

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	<p>moderate share of broadband customers demonstrates the existence of viable alternative providers through which edge providers can reach end customers.</p> <ul style="list-style-type: none"> <li>○ There is no theoretical or empirical support for the contention that increasing Comcast's ISP size would increase its bargaining power vis-à-vis its counterparties in the separate interconnection market. It is the quality and value of Comcast's network – the backbone facilities in which it has invested billions of dollars over the last decade to build out and reach across the nation and interconnect with hundreds of networks – not the number of end-user customers it serves, that drives interconnection pricing and terms.</li> <li>• Comcast is currently the only broadband provider legally bound by the now-vacated prohibitions on blocking and unreasonable discrimination, and the Transaction will extend those protections to customers in the acquired systems.</li> </ul>	<p>numerous routes edge providers and CDNs can and do access to deliver traffic on Comcast's network and noting that Netflix's artificial restriction of its connection to Comcast's network via only a small number of settlement-free routes represents a fraction of available routes in that category alone).</p> <ul style="list-style-type: none"> <li>• Nov. 19 Ex Parte at 4 (noting Netflix's multi-year campaign to create congestion in order to strong-arm Comcast which demonstrates Netflix's bargaining leverage and unilateral control over its traffic).</li> <li>• Nov. 25 Letter (describing reasons why edge providers may prefer direct interconnection and discussing Comcast's multi-billion dollar investment in its national network facilities, including tripling the number of peering locations in the past seven years).</li> </ul>



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		<ul style="list-style-type: none"> <li>Nov. 26 Responses, Question 3 at 1-16 (noting there is no support for the notion that Comcast's bigger size would change its bargaining leverage with OVDs and edge providers, as illustrated by the Netflix dispute).</li> <li>Dec. 8 Letter (providing data regarding Comcast's interconnection capacity and utilization rates).</li> <li>Reply to Responses at 54-61.</li> </ul>
<p>Comcast may use data caps to discourage customers from viewing OVD content.</p> <p>(Dish, Free Press, LA County et al., Netflix, Public Knowledge et al., Stop the Cap!, WGAW et al.)</p>	<ul style="list-style-type: none"> <li>Concerns about the use of usage-based billing ("UBB") are not transaction-specific. Comcast's UBB trials are not a harm to customers. Comcast treats all Internet traffic the same, and <i>all</i> Internet traffic – affiliated or not – is subject to UBB in markets where Comcast is trialing such programs.</li> <li>But Internet traffic is distinct from Comcast's cable service even when delivered in IP format. Cable services – whether delivered using QAM or IP – are entirely separate from Internet traffic and are not, and have never been, subject to Comcast's UBB or its previous data cap. Moreover, although there is no coherent claim that UBB harms consumers, there are strong economic arguments that UBB promotes efficiency.</li> </ul>	<ul style="list-style-type: none"> <li>Opposition at 235-39.</li> <li>Comcast Response to Information Request No. 59 (detailing Comcast's history with UBB trials and trial results).</li> </ul>



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<p>The Transaction will facilitate withholding programming from MVPDs and OVDs. (AAI, ACA, CenturyLink, CFA, Consumers Union et al., Dish, NHMC, WGAW et al.)</p>	<ul style="list-style-type: none"> <li>• The Transaction involves an immaterial amount of additional video programming and will not increase Comcast's incentive or ability to engage in any kind of foreclosure strategy.               <ul style="list-style-type: none"> <li>◦ This issue is not transaction-specific, because the bulk of Comcast's valuable content was acquired in the NBCUniversal transaction, and those concerns were addressed by conditions adopted in that proceeding.</li> <li>◦ Comcast's video programming holdings do not reflect market power as a programming seller, and this Transaction will have no effect on either Comcast's share of national programming networks or local broadcast stations.</li> <li>◦ Comcast today accounts for less than 12 percent of video programming by revenue nationwide (including broadcast, national cable networks, and RSNs), and the Transaction will increase that by only 0.25 percent.</li> </ul> </li> <li>• Comcast's track record proves that it will not withhold content. Since the NBCUniversal transaction closed, there have been no major disputes with any MVPDs regarding access to affiliated NBCUniversal programming on fair and reasonable terms.               <ul style="list-style-type: none"> <li>◦ Since 2011, NBCUniversal has successfully reached comprehensive renewal agreements with, among others, Verizon, Cablevision, Charter, Dish, Suddenlink, Mediacom, and NCTC without resort to arbitration.</li> <li>◦ Likewise, NBCUniversal has successfully licensed or renewed programming content to numerous OVDs including Amazon, Netflix, and YouTube, and only one OVD has elected to proceed to arbitration (and that matter did not involve any withholding of content, but instead concerned which content the OVD could have in light of</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Public Interest Statement at 164-69.</li> <li>• Rosston/Topper Decl. ¶¶ 211-235.</li> <li>• Opposition at 239-49.</li> <li>• Rosston/Topper Reply Decl. ¶¶ 82-104, 111-187.</li> <li>• Nov. 26 Responses, Question 1 at 6-9 (further explaining that the Transaction will create no enhanced incentive to foreclose access to NBCUniversal programming and that Comcast's record proves it will not withhold content).</li> </ul>

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	<p>contractual limitations).</p> <ul style="list-style-type: none"> <li>Comcast lacks the incentive to pursue any temporary or permanent foreclosure strategy, because its costs would outweigh any potential benefits. <ul style="list-style-type: none"> <li>If Comcast were to begin withholding popular NBCUniversal networks, it would lose revenue, and, over time, viewers would lose interest, and video distributors would demand a lower price. NBCUniversal would in turn lose the ability to sustain prices from advertisers for that programming, also resulting in revenue loss. Similarly, the value of Comcast's programming assets is highly dependent on the ability to attract creative talent to produce hit TV programs. Withholding programming and losing viewers would create a downward spiral for NBCUniversal by diminishing the reputation of its networks among content creators and would cause creators to launch new shows on competing networks.</li> <li>Applying the FCC's own theoretical and empirical analysis in the NBCUniversal transaction, Drs. Rosston and Topper concluded that the Transaction presents no increased risk of foreclosure of any NBCUniversal programming to MVPDs. The losses sustained by Comcast's programming sales business for either temporary or permanent foreclosure would outstrip any minor increase in MVPD revenues arising from subscribers switching to Comcast.</li> </ul> </li> <li>Any residual concern that the combined company will withhold programming is mitigated by the FCC's existing program access regulations and the conditions of the <i>NBCUniversal Order</i>.</li> <li>Faced with robust MVPD competition in all areas it serves, Comcast has every incentive to carry networks that its subscribers want, without regard to affiliation.</li> </ul>	
The Transaction will facilitate affiliation-based discrimination against		<ul style="list-style-type: none"> <li>Public Interest Statement at 169-71.</li> <li>Rosston/Topper Decl. ¶¶ 202-</li> </ul>



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<p>programmers, including Hispanic programmers. (Back9, Entravision, Herring, Monumental Sports, RFD, Sinclair, Sports Fans, TheBlaze, TVC, Veria Living, WeatherNation)</p>	<ul style="list-style-type: none"> <li>o The MVPD market is more competitive than ever, and refusing to carry unaffiliated programming content that customers demand would critically damage Comcast's subscription business and drive customers to competing MVPDs.</li> <li>• There is no basis to conclude that Comcast has favored its affiliated networks or would do so following the Transaction. The additional TWC programming at issue here will not create incentives for Comcast to pursue a programming foreclosure strategy. Comcast has no ownership interest in the overwhelming majority of the content it distributes and this will not change post-transaction. <ul style="list-style-type: none"> <li>o Since acquiring NBCUniversal, Comcast has negotiated successfully with numerous unaffiliated national programmers, large and small.</li> <li>o Comcast has launched or expanded the carriage of 141 unaffiliated networks in recent years by more than 217 million customers collectively. Post-transaction, six out of every seven networks that Comcast carries will continue to be unaffiliated.</li> <li>o Application of the FCC's own economic model in the <i>NBCUniversal Order</i> for assessing discrimination on the basis of affiliation indicates that there has been no such pattern since the NBCUniversal transaction, either on behalf of legacy Comcast networks or newly acquired NBCUniversal networks.</li> </ul> </li> <li>• The Transaction will result in no increased concentration of national programming and only limited additional regional and local programming, and Comcast's larger distribution scale will not enable or encourage Comcast to discriminate against unaffiliated programmers.</li> <li>o The Transaction does not raise program carriage concerns in local markets. Comcast is gaining only limited incremental shares in markets where there is a Comcast RSN, and this added distribution</li> </ul>	<p>205.</p> <ul style="list-style-type: none"> <li>• Opposition at 249-62.</li> <li>• Rosston/Topper Reply Decl. ¶¶ 83-104.</li> <li>• Comcast Response to Information Request Nos. 23-25 (explaining how the Transaction will not result in either foreclosure of unaffiliated programming or increased prices of affiliated programming and demonstrating that Comcast does not favor its affiliated programming).</li> <li>• Reply to Responses at 26-28 (responding to TVC's claims).</li> </ul>

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	<p>does not significantly increase Comcast's incentive or ability to foreclose competing RSNs.</p> <ul style="list-style-type: none"> <li>The Transaction will not increase Comcast's incentive to discriminate against unaffiliated Hispanic programming. There is no credible claim that Comcast's carriage decisions with respect to local or national Spanish-language channels have been tainted in any way by Comcast's ownership of Telemundo or mun2; Comcast is a leader in carrying such programming.</li> <li>The FCC's existing comprehensive regulatory scheme already addresses the potential for any anticompetitive denial of program carriage, in particular prohibiting MVPDs from engaging in anticompetitive behavior on the basis of affiliation or non-affiliation of vendors for carriage of video programming provided by such vendors.</li> </ul>	
<p>The Transaction will result in harm to advertising by reducing local cable advertising options, giving Comcast control over interconnects and NCC Media, and stifling the development of advanced advertising services.</p> <p>(ACA, CenturyLink, RCN et al., Viamedia)</p>	<ul style="list-style-type: none"> <li>Competition in the advertising industry is robust, and the current advertising services offered by Comcast and TWC compete with many other media. <ul style="list-style-type: none"> <li>Notably, no advertisers oppose the Transaction; the only advertisers who filed in this proceeding strongly support it.</li> </ul> </li> <li>The Transaction will not adversely affect the competitive landscape for national advertising, since there will be no change in the ownership of any national broadcaster or cable network.</li> <li>The Transaction will not impact local cable advertising competition because the companies do not currently compete for local advertisers.</li> <li>Comcast will not dominate the spot cable advertising market, where it is constrained by robust competition from other local advertising media, including the multiple television and non-television options available in local markets (e.g., radio, Internet, newspapers, billboards, and direct</li> </ul>	<ul style="list-style-type: none"> <li>Public Interest Statement at 100-06, 155-56.</li> <li>Rosston/Topper Decl. ¶¶ 29, 144-161, 236-246.</li> <li>Comcast Response to Information Request Nos. 46-49 (describing Comcast's role in cable spot advertising market and provision of cable advertising representation services), 80 (identifying transaction-related benefits for advertisers).</li> <li>Opposition at 267-68, 271-82.</li> </ul>



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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<p>marketing).</p> <ul style="list-style-type: none"> <li>o Spot cable advertising accounts for only about seven percent of the \$72 billion annual spending on local advertising. A seven percent concentration level is irrelevant under any antitrust standard.</li> <li>o The Transaction will not result in reduced supply of spot cable advertising to local advertisers or increased prices; in fact, the Transaction may increase supply given Comcast Spotlight's greater emphasis on local businesses and focus on local zone than TWC.</li> <li>o The Transaction will not reduce competition or raise local cable advertising prices in New York – Comcast and TWC do not reach the same households, local cable comprises a small share of the New York local advertising market, and local cable advertising prices in New York are disciplined primarily by the competitive local advertising marketplace in New York, not by illusory competition between two cable interconnects.</li> <li>• The Transaction will not harm cable advertising representation services. <ul style="list-style-type: none"> <li>o Interconnects did not develop as a public utility. The creation and management of an interconnect require significant investment by the largest MVPD in the market for its own and its interconnect partners' benefit. Comcast has, for example, invested in technological advancements that have enabled it to place ads on telcos and DBS MVPDs in addition to MSOs, a task Comcast undertook to create business opportunities for itself with advertisers.</li> <li>o In nearly all DMAs (other than New York City) where Comcast would gain control of the interconnect as a result of the Transaction, the change simply consists of Comcast managing the interconnect instead of TWC, which will make little practical difference.</li> <li>o The value of an interconnect increases as more MVPDs in an area</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Rosston/Topper Reply Decl. ¶¶ 215-249.</li> <li>• Oct. 16 Advertising Ex Parte at 2-4 (responding to inaccurate and misleading claims by Viamedia).</li> <li>• Nov. 26 Responses, Question 6 at 5 (noting that additional scale afforded by the Transaction will accelerate the deployment, measurement and uptake of advanced advertising services).</li> <li>• Reply to Responses at 20-23 (explaining that the Transaction will result in the development and deployment of next-generation advertising technologies); 61-64 (further refuting Viamedia's claims).</li> </ul>

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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<p>participate, so Comcast's incentive is to have as many MVPDs participate as possible, as evidenced by the fact that Comcast has generally accepted every MVPD into the Comcast-managed interconnects.</p> <ul style="list-style-type: none"> <li>○ The Transaction will not impact Comcast's existing marketplace practices vis-à-vis those interconnects that it manages.</li> <li>○ Following the Transaction, MVPDs will retain the same ability as they have today to sell their local spot cable advertising time directly to advertisers, through NCC Media or another national firm, through any of the interconnects that Comcast manages, which are open to all MVPDs, or through Viamedia.</li> <li>○ Viamedia's claim that it should be entitled to join the interconnects Comcast manages is a different question, because Viamedia competes with interconnects and their MVPD managers. Viamedia only began to claim that it must be in interconnects to survive after the Transaction was announced, despite coexisting with Comcast and interconnects for the past 15 years. And there is nothing anticompetitive about a firm electing not to do business with one of its competitors, as the Supreme Court has long recognized. Despite this, Comcast has been willing to explore arrangements with Viamedia and even proposed terms for Viamedia's participation in several markets of its choice, but Viamedia has since walked away from further discussions.</li> <li>○ Claims that Comcast pressures MVPDs into interconnects that it manages – and Viamedia's suggestion that Comcast Spotlight should be prohibited from providing representation services for these interconnects – are unfounded.</li> <li>• The Transaction raises no competition issues with respect to NCC Media.</li> </ul>	



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	<p>of which Comcast already owns a majority.</p> <ul style="list-style-type: none"> <li>o NCC is not in the “national” advertising market; it is in the national <i>spot</i> advertising market and simply offers advertisers the convenience of working through one entity to arrange ad buys for spot cable/MVPD advertising across multiple areas.</li> <li>o Comcast already has a majority equity ownership interest in NCC Media, so Comcast’s acquisition of TWC’s minority interest in NCC Media presents no merger-specific issues. NCC Media already has independent management and has a governing board. After the transaction, Comcast and Cox will each have one vote, and major decisions will have to be made with both parties’ consent.</li> <li>o More importantly, the Transaction does not change NCC Media’s incentive to partner with as many MVPDs (or their sales representatives) as possible to be able to offer advertisers broad access to the spot cable/MVPD market.</li> <li>• The Transaction will accelerate the deployment, measurement, and use of advanced advertising services for the benefit of advertisers.</li> <li>o The Transaction will provide an expanded customer base and greater geographic reach necessary to further invest in next-generation advertising technologies.</li> <li>o These developments will likely benefit content providers and consumers as well by increasing incentives to make additional programming available on VOD and other platforms.</li> </ul>	
	<b>V. OTHER NON-TRANSACTION SPECIFIC ISSUES</b>	
The Transaction will exacerbate customer	<ul style="list-style-type: none"> <li>• Comcast agrees that its customers deserve an excellent customer service experience. Although it has made measurable strides, Comcast</li> </ul>	<ul style="list-style-type: none"> <li>• Public Interest Statement at 71-73.</li> </ul>

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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
<p>service problems. (Consumers Union et al., Greenlining, LA County et al., Public Knowledge et al.)</p>	<p>recognizes that it needs to improve to meet customers' expectations. Separate from this Transaction, Comcast is already investing significant time and resources to do so.</p> <ul style="list-style-type: none"> <li>• Concerns about customer service are not transaction-specific. The record contains no evidence of customer service harms that would be caused or exacerbated by the Transaction. Instead, there are only speculative claims (such as unfounded speculation that greater size yields poorer service) and anecdotal evidence.</li> <li>• The FCC has previously concluded that customer service issues are not part of a transferee's character qualifications and has rejected prior claims to establish retail customer service requirements as part of a transaction proceeding absent a demonstration that customer service is likely to suffer as a result of the Transaction. The record here is no different than these prior proceedings.</li> <li>• Comcast is working to improve the customer experience. It has created a task force and is engaged in changes to reinforce that the customer experience is the company's top priority. <ul style="list-style-type: none"> <li>◦ As Brian Roberts recently noted: "Over the last few years, we've been incredibly focused on product innovation and delivering great content and technology experiences. So now it's time to leverage those capabilities to deliver truly exceptional customer service. The way we interact with our customers on the phone, online, in their homes is just as important to our success as the products that we provide. Put simply, customer service should be our best product."</li> <li>◦ Comcast appointed industry veteran and X1 developer Charlie Herrin to the position of Comcast Senior Vice President, Customer Experience, who is working to revamp Comcast's end-to-end customer service operations</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Opposition at 282-88.</li> <li>• Israel Reply Decl. ¶¶ 212-213.</li> <li>• Reply to Responses at 30-33.</li> </ul>



Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
Customer prices will increase. (Consumers Union et al., Parents Television Council et al., Public Knowledge et al.)	<ul style="list-style-type: none"> <li>Comcast recently announced customer service initiatives that will improve the customer experience. First, Comcast has teamed up with The UPS Store to offer convenient and free equipment returns at more than 4,400 UPS Store locations nationwide. Second, Comcast has begun trialing one of the latest customer service innovations, which enables customers to track Comcast technicians' arrival in real time through the My Account app.</li> </ul>	
	<ul style="list-style-type: none"> <li>Conclusory claims about prices for video and broadband services are not specific to the Transaction, Comcast, or TWC, and deserve no weight.</li> <li>Because the Transaction will not reduce consumer choice in any market, it will have no tendency to affect consumer prices. More generally, the video marketplace is thriving, and cable operators and other MVPDs face enormous pressure to offer reasonable prices and attractive programming, features, and options to consumers.</li> <li>While cable prices have not been stagnant, increased programming costs have been the primary driver of the growth in cable's video prices. While Comcast's programming costs (which are the single largest component of Comcast's cost base) increased by over 120 percent from 2004 through 2013, Comcast's prices to customers rose at about <i>half</i> that rate during the same time period. And the Commission's pricing data show that across the industry the price per channel of expanded basic (the most popular tier among consumers) actually <i>decreased</i> by 0.3 percent per year from 1995 to 2013, while the CPI rose 2.4 percent per year during that same period. The most recent Cable Prices Report also indicates that there is virtually no change in price per channel on an average annual compound basis.</li> <li>Moreover, the value proposition for Comcast customers in particular has been significant, with HD, VOD, and TVE.</li> </ul>	<ul style="list-style-type: none"> <li>Opposition at 288-94.</li> <li>Rosston/Topper Reply Decl. ¶¶ 40-42, 47, 69-75, 182.</li> <li>Reply to Responses at 33-35.</li> </ul>

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Areas of Concern (Primary Parties Raising Concern) <sup>1</sup>	Applicants' Response	Record Cites To Applicants' Response <sup>2</sup>
	<ul style="list-style-type: none"> <li>The value proposition for Comcast broadband has steadily increased as well, with Internet speeds increasing 13 times in the last 12 years, and some residential customers have access to speeds up to 505 Mbps. On a quality-adjusted basis, the price of Comcast broadband service has substantially decreased over the last seven years.</li> </ul>	
<p>The Transaction will undermine PEG programming.</p> <p>(Alliance for Community Media et al., American Community Television et al., LA County et al., NATOA)</p>	<ul style="list-style-type: none"> <li>The record shows that Comcast provides substantial resources and support for PEG programming. Comcast is the largest distributor of PEG programming in the country, and has a long history of supporting PEG programming.</li> <li>Parties that propose conditions relating to PEG programming merely mirror their requests in other FCC proceedings and in proposed legislation, which go well beyond any of the statutory PEG requirements imposed on cable operators. These proposals have nothing to do with the Transaction, and these parties offer no evidence that the Transaction will have any harmful effect on PEG programming, which is already covered by Section 611 of the Act, state franchising laws, and local cable franchise agreements.</li> <li>If anything, the Transaction will <i>benefit</i> PEG programming because it will extend Comcast's PEG commitments from the NBCUniversal transaction to the acquired systems.</li> <li>Comcast's provision of PEG channel capacity and financial support has continued against a backdrop of increasingly aggressive competitors – none of which are required to match cable's PEG obligations. <ul style="list-style-type: none"> <li>DirecTV and Dish do not provide local PEG programming or contribute to PEG efforts; neither do edge providers such as Netflix, Amazon, or Apple. Imposing any additional conditions here would be entirely unjustified and inappropriate.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Opposition at 294-300.</li> <li>Reply to Responses at 27-28.</li> <li>Dec. 3 Letter (providing analysis prepared by Compass Lexecon concluding that there have been substantial decreases in broadband prices on a quality-adjusted basis).</li> </ul>



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<p>Conditions mandating wholesale access are needed to mitigate competitive harms.</p> <p>(COMPTTEL, Maine RLECs, Spot On Networks, TEXALTEL)</p>	<ul style="list-style-type: none"> <li>• Because there will be no reduction in competition within the broadband, video, voice, or any other service market, there is no transaction-specific harm that could even remotely justify ILEC-style unbundling requirements or other wholesale mandates.</li> <li>• Wholesale mandates would harm the public interest by reducing the incentives of all market participants – not only for Comcast but for its competitors as well – to deploy new facilities and improve service, and by imposing substantial costs that would be borne by consumers.</li> <li>• The FCC has rightly – and repeatedly – rejected prior proposals to subject cable operators to open access, resale, or comparable wholesale obligations, both in industry-wide proceedings and in reviews of specific transactions.</li> <li>• In any event, Comcast already has agreed to extend and enhance the existing wholesale business services arrangements that TWC has established, making any such conditions wholly unnecessary.</li> </ul>	<ul style="list-style-type: none"> <li>• Opposition at 193-94, 311-13.</li> </ul>
<p>The Transaction will harm broadcasters.</p> <p>(NBC Affiliates, Sinclair, Affiliate Associations)</p>	<ul style="list-style-type: none"> <li>• Concerns raised by certain broadcasters are wholly unrelated to this Transaction and provide no basis for the conditions they request. <ul style="list-style-type: none"> <li>◦ Speculative claims that the Transaction will harm broadcasters (with respect to issues like local advertising sales, content rights, carriage of future offerings, new broadcast technologies, and network-affiliate compensation arrangements) and the associated proposed conditions merely reflect broadcasters' general frustration with industry-wide broadcast regulations.</li> <li>◦ Any concerns the NBC Affiliates had with the NBCUniversal transaction are not present in the instant Transaction, where Comcast will gain cable customers but few programming assets and no broadcast stations. Any issues from three years ago have proved not to be problems related to the actual behavior of Comcast and</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Public Interest Statement at 109-10.</li> <li>• Opposition at 318-20.</li> <li>• Reply to Responses at 35-41 (refuting Affiliate Associations).</li> </ul>

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	<p>NBCUniversal in building and recommitting to the broadcast business.</p> <ul style="list-style-type: none"> <li>• The NBCUniversal conditions regarding network affiliation and retransmission consent will extend to the newly acquired cable systems and therefore fully address any reasonable concerns relating to Comcast's role in broadcasting and cable.</li> <li>• There is no basis in competition law or FCC precedent to conclude that the Bright House program-buying arrangement presents competitive concerns. Moreover, Comcast and Bright House are purchasers, not sellers, of programming (as opposed to competing broadcast stations in a single market who are sellers of advertising and programming). The antitrust laws have long recognized that joint purchasing arrangements – as opposed to joint sales by competitors – are generally not anticompetitive and may be procompetitive. The FCC has specifically approved joint MVPD buying groups and accords them various protections under the program access rules and the <i>NBCUniversal</i> conditions.</li> </ul>	
<p>Approval of this Transaction will spur further industry consolidation.</p> <p>(Consumers Union et al., Frontier, ITTA, Public Knowledge et al.)</p>	<ul style="list-style-type: none"> <li>• As a matter of law and sound public policy, and consistent with well-established FCC precedent, generic and speculative concerns about future transactions can have no bearing on the FCC's analysis of this Transaction.</li> <li>• The FCC has long recognized – and courts have affirmed – that the agency's duty is to review only the proposed transaction before it based on actual record evidence. This Transaction thus must be considered on its own merits.</li> <li>• The AT&amp;T-DirecTV transaction likewise must be judged on its own merits, in its own docket. For purposes of this Transaction, neither the approval nor rejection of the AT&amp;T-DirecTV deal would reduce the</li> </ul>	<ul style="list-style-type: none"> <li>• Opposition at 322-23.</li> </ul>



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	substantial public interest benefits of this Transaction or weaken the showing here that the Transaction will result in no competitive or public interest harms.	

**TABLE A**

Acronym/ Abbreviated Cite	Party
AAI	American Antitrust Institute
ACA	American Cable Association
Affiliate Associations	ABC Television Affiliates Association, CBS Television Network Affiliates and Fox Television Affiliates Association
Alliance for Community Media et al.	Alliance for Community Media and the Alliance for Communications Democracy
American Community Television et al.	American Community Television and SouthEast Association of Telecommunications Officers and Advisors
Back9	Back9 Network, Inc.
Beach TV	Beach TV Cable Co., Inc. d/b/a Key TV
CBET	Cincinnati Bell Extended Territories LLC
CBM	Christian Black Media
CenturyLink	CenturyLink, Inc.
City of Los Angeles	City of Los Angeles – Office of the Mayor
CFA	Consumer Federation of America
Cogent	Cogent Communications Group, Inc.
Common Cause	Common Cause
COMPTEL	COMPTEL
Consumer Watchdog	Consumer Watchdog
Consumers Union et al.	Consumers Union and Common Cause
Discovery	Discovery Communications, Inc.

Acronym/ Abbreviated Cite	Party
Dish	Dish Network Corp.
Entravision	Entravision Communications Corp.
Free Press	Free Press
Frontier	Frontier Communications Corp.
Greenlining	The Greenlining Institute
Hargray	Hargray Communications Group
Hawaiian Telcom	Hawaiian Telcom Services Company, Inc.
Herring	Herring Broadcasting
IFTA	Independent Film and Television Alliance
ITTA	ITTA – The Voice of Mid-Size Communications Companies
LA County et al.	Los Angeles County, California; Montgomery County, Maryland; the City of Portland, Oregon; and the Ramsey-Washington Counties (MN) Suburban Cable Communications Commission
LPTV Coalition	LPTV Spectrum Rights Coalition
Maine RLECs	Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, Oxford West Telephone Company, and UniTel, Inc.
Monumental Sports	Monumental Sports and Entertainment
My Christian TV	My Christian TV Eden, Inc.
NATO	National Association of Telecommunications Officers and Advisors
NBC Affiliates	The NBC Television Affiliates
Netflix	Netflix, Inc.
NHMC	National Hispanic Media Coalition
NJ Rate Counsel/NASUCA	New Jersey Division of Rate Counsel and National Association of State Utility Consumer Advocates

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Acronym/ Abbreviated Cite	Party
NTCA	NTCA-The Rural Broadband Association
Parents Television Council et al.	Parents Television Council, Citizens for Community Values, American Decency Association, Morality in Media, Illinois Family Association, and American Family Association
Public Knowledge et al.	Public Knowledge and Open Technology Institute (New America Foundation)
RCN et al.	RCN Telecom Services, LLC, Grande Communications Networks, LLC, and Choice Cable TV of Puerto Rico
RFD	RFD-TV
Sen. Franken	Senator Al Franken
Sinclair	Sinclair Broadcast Group, Inc.
Sports Fans	Sports Fans Coalition
Spot On Networks	Spot On Networks, LLC
Stop the Cap!	Stop the Cap!
Tennis Channel	The Tennis Channel, Inc.
TEXALTEL	TEXALTEL
TheBlaze	The Blaze Inc.
TVC	TVC United States, Inc.
Veria Living	Veria Living
Viamedia	Viamedia, Inc.
WeatherNation	WeatherNation TV, Inc.
WGAW et al.	Writers Guild of America West, Inc. and Future of Music Coalition



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**TABLE B**

1. Applications and Public Interest Statement of Comcast Corp. and Time Warner Cable Inc. (Apr. 8, 2014) (“Public Interest Statement”).
2. Public Interest Statement, Exhibit 6, Declaration of Dr. Mark A. Israel (“Israel Decl.”).
3. Public Interest Statement, Exhibit 5, Declaration of Dr. Gregory L. Rosston and Dr. Michael D. Topper (“Rosston/Topper Decl.”).
4. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Sept. 11, 2014) (“Comcast Response to Information Request”).
5. Public Interest Statement, Exhibit 4, Declaration of Michael J. Angelakis (“Angelakis Decl.”).
6. Comcast Corp., and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments (Sept. 23, 2014) (“Opposition and Response”).
7. Opposition and Response, Exhibit 1, Reply Declaration of Dr. Mark A. Israel (“Israel Reply Decl.”).
8. Opposition and Response, Exhibit 2, Reply Declaration of Dr. Gregory L. Rosston and Dr. Michael D. Topper (“Rosston/Topper Reply Decl.”).
9. Opposition and Response, Exhibit 3, Declaration of Dr. Dennis W. Carlton (“Carlton Decl.”).
10. Opposition and Response, Exhibit 5, Declaration of Dr. Constantine Dovrolis (“Dovrolis Decl.”).
11. Opposition and Response, Exhibit 4, Declaration of Kevin McElearney (“McElearney Decl.”).
12. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Oct. 16, 2014) (“Oct. 16 Advertising Ex Parte”).
13. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Oct. 16, 2014) (“Oct. 16 Program Carriage Ex Parte”).
14. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Oct. 27, 2014) (“Oct. 27 Equipment Ex Parte”).
15. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Nov. 3, 2014) (“Nov. 3 Traffic Exchange Ex Parte”).
16. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Nov. 12, 2014) (“Nov. 12 Ex Parte”).

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17. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Nov. 25, 2014) (“Nov. 25 Letter”).
18. Letter from Kathryn A. Zachem, Senior Vice President, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Nov. 26, 2014) (“Nov. 26 Responses”).
19. Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Dec. 3, 2014) (“Dec. 3 Letter”).
20. Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Dec. 5, 2014) (“Dec. 5 Letter”).
21. Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, Secretary, FCC (Dec. 5, 2014) (“Dec. 8 Letter”).
22. Letter from Matthew A. Brill, Latham & Watkins LLP, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC (Dec. 15) (“Dec. 15 TWC Ex Parte”).
23. Matt Strauss, *HBO Go & Showtime Anytime on Roku Players and Roku TV: Now Available for Xfinity TV Customers*, Comcast Voices (Dec. 16, 2014) (“Comcast/Roku Blog Post”), <http://corporate.comcast.com/comcast-voices/hbo-go-showtime-anytime-on-roku-players-and-roku-tv-now-available-for-xfinity-tv-customers>.
24. Comcast Corp., and Time Warner Cable Inc., Reply to Responses (Dec. 23, 2014) (“Reply to Responses”).

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# **EXHIBIT B**

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**Comments of Dr. Mark A. Israel on Federal Communication Commission's  
December 9, 2014 Memo Regarding Broadband Subscriber Data**

**December 23, 2014**

1. In its December 9, 2014 memo, the Commission staff entered certain broadband subscriber and share data into the public record in order to “facilitate informed discussion” concerning the applications to assign or transfer control of licenses involving Comcast, Time Warner Cable, Charter, and SpinCo.<sup>1</sup> In this submission, I provide comments on the *FCC Memo*.

Overall Comments

2. With regard to the detailed figures and calculations themselves (as distinct from any economic inferences that may be drawn from them, on which I comment separately below), I have no major objections or disagreements. I do find {{ }} than the Commission staff reports, and I discuss the reasons for these differences below. But, bottom line, the broadband shares presented in the *FCC Memo* (see Exhibit 1, in particular) {{ }} to the shares that I presented in my Reply Declaration to the FCC (and updated below using the most recent FCC data).<sup>2</sup>

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<sup>1</sup> Memo from William T Lake, Chief, Media Bureau of FCC with the subject: “Application of Comcast Corporation, Time Warner Cable Inc., Charter Communications Inc., and SpinCo for Consent to Assign Licenses or Transfer Control of Licenses, MB Docket No. 14-57, ” December 9, 2014. (hereinafter, *FCC Memo*).

<sup>2</sup> Declaration of Mark A. Israel, “Economic Analysis of the Effect of the Comcast-TWC Transaction on Broadband: Reply to Commenters,” Attachment to Comcast Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, September 23, 2014 (hereinafter, *Israel Reply Declaration*). See also, Declaration of Mark A. Israel, “Implications of the Comcast/Time Warner Cable Transaction for Broadband Competition,” Attachment to Comcast Corporation and Time Warner Cable Inc., Description of Transaction, Public Interest Showing, and Related Demonstrations, April 8, 2014 (hereinafter, *Israel Declaration*).



3. As to the economic interpretation of the figures and calculations, I do not believe that these figures and calculations (or comments regarding them) should “play an integral role in the Commission’s ultimate determination about whether the proposed transactions in the proceeding are in the public interest.”<sup>3</sup> In general, the various exhibits shown in the *FCC Memo* have little or no bearing on an economic analysis of the competitive effects of the proposed transaction. I explain this conclusion in the following paragraphs.
4. First, as explained in the *Israel Declaration* and the *Israel Reply Declaration*, there is no meaningful *national* broadband market. Consumers shop for broadband from the set of options available locally and thus that set of local options defines the relevant market for a competitive analysis. The use of a national broadband market would lead to nonsensical conclusions, such as that cable and telco providers that are not even available to a given consumer would nevertheless be part of the relevant market for that consumer. Hence, the national shares presented in Exhibit 1 of the *FCC Memo* lack the significance that is often bestowed on market share calculations, as these are not shares in any meaningful antitrust market and thus do not bear on an analysis of any horizontal competitive issues in this case. Moreover, these national shares are not informative about alternative theories of harm, including theories regarding foreclosure of online video distributors (OVDs), because the marketplace realities (and economic theory) that refute such theories are not predicated on any particular level of national broadband share for Comcast or any other ISP. As explained in the *Israel Declaration* and the *Israel Reply Declaration*, the key marketplace realities include:

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<sup>3</sup> *FCC Memo*, p. 2.

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- that well-established firms (including Google, Apple, Amazon, Sony, and Netflix, {{  
  
}}) have (or are developing) OVD businesses, using global distribution strategies, to support core components of their overall business strategies;
- that the nature of Internet transport means that any OVD can make use of multiple paths offering substantial capacity into Comcast's or other ISPs' networks, which the ISPs must keep open in order to maintain a viable broadband service;
- and that the high-speed broadband service offered by Comcast—which opponents of the transaction allege as a source of market power for Comcast—actually implies that Comcast's services are particularly complementary with OVD offerings, meaning that such offerings stimulate demand for Comcast's profitable broadband service and that Comcast lacks any incentive to stifle the ability of such services to attract users.

These key marketplace realities do not depend on the size or share of Comcast or any other ISP.

5. Second, I note that some commenters have advocated for both (i) close scrutiny of national broadband shares and (ii) the use of a 25 Mbps download speed to define broadband.<sup>4</sup> Although I disagree with both of these arguments (for reasons explained in the *Israel Declaration* and the *Israel Reply Declaration*), I note that the *FCC Memo*

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<sup>4</sup> See, for example, Declaration of David S. Evans, "Economic Analysis of the Impact of the Comcast/Time Warner Cable Transaction on Internet Access to Online Video Distributors," Attachment to Petition to Deny of Netflix Inc., August 25, 2014 (hereinafter, *Evans Declaration*); Declaration of David Sappington, "The Anticompetitive Effects of the Proposed Merger of Comcast and Time Warner Cable," Attachment to Petition to Deny of DISH Network, August 25, 2014 (hereinafter, *Sappington Declaration*).

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{{
 }} that, using these two standards together, the proposed transaction has almost no effect on Comcast’s national broadband share.<sup>5</sup> In particular, using a 25 Mbps/3 Mbps standard, Exhibit 1 of the *FCC Memo* shows a change {{

}}. Even if one incorrectly focuses on national share, the relevant metric for assessing horizontal competitive effects is not the level of share but rather the change in share, and using a 25 Mbps standard for broadband, the merger yields almost no such change.

6. Third, the in-footprint shares, presented in Exhibit 2 of the *FCC Memo*, cannot be used to support any inference of competitive harm from the proposed transaction. If anything, those in-footprint shares serve to highlight the non-overlapping territories of Comcast and Time Warner Cable and thus the lack of horizontal competitive effects from the proposed transaction. More generally, given that these in-footprint shares { } by the proposed transaction at all, they cannot support any theory of incremental merger effects relative to the status quo.
7. If one chooses to focus on within footprint shares (despite the fact that they cannot support any claim of merger-specific harm), the *FCC Memo* actually supports my position that there are important and growing competitive broadband alternatives within the footprints of both Comcast and TWC. In particular, Exhibit 5 of the *FCC Memo* supports my conclusion that DSL remains a viable competitive alternative to cable, particularly because a shift to “upgraded DSL,” even without going all the way to a fiber-

<sup>5</sup> *Israel Declaration ¶ 20 and Israel Reply Declaration ¶ 34-35.*

to-the-premises solution, greatly increases DSL's share (and reduces cable share). In particular, Exhibit 5 shows that, using today's broadband definition (3 Mbps/768 Kbps), while cable's share of broadband subscribers is 85 percent in census tracts with legacy DSL, it falls to 63 percent in census tracts with upgraded DSL, and below 50 percent (to 48 percent) in census tracts with fiber-to-the-premises. Similar results hold using a 10 Mbps/768 Kbps standard for broadband. The substantial decline in cable's share when upgraded DSL is present shows the competitive impact of the ongoing upgrades of DSL technology, even in cases where the telco provider does not implement a full fiber-to-the-premises solution. And DSL upgrades, including both fiber-to-the-node and other upgrades, are expected to continue beyond the period covered by the Commission's data: Indeed, as of December 2013 (the most recent data available from the Commission), ATT's "Project VIP" was less than halfway complete.<sup>6</sup>

8. Finally, I note that the competitive options presented in the *FCC Memo* ignore mobile wireless options and thus necessarily understate the set of competitive broadband alternatives relevant to any market analysis, at least to some degree. I do not claim that mobile broadband options are equivalent to wired broadband options today, but they are certainly relevant for some people and uses today, and are sure to become increasingly relevant for more people and more uses over time, as reflected by recent statistics showing a large and growing proportion of video consumption on mobile devices,

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<sup>6</sup> See AT&T, "AT&T to Invest \$14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services," News Release, November 7, 2012, available at <http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode=>.



including outside the home.<sup>7</sup> A forward-looking competitive analysis cannot ignore mobile options simply because they are less relevant today: Just three years ago, there was very little LTE deployment; today LTE is nearly ubiquitous in the US, and one should expect similarly rapid developments over the next few years, including growth of mobile OVDs such as that in development by Verizon.<sup>8</sup>

Detailed Comments on FCC Figures and Calculations

9. In Exhibit 1, the *FCC Memo* presents data on “national-level broadband shares” for various speed thresholds before and after the proposed transaction. Despite some relatively minor data and methodological differences, the figures reported in the *FCC Memo* are {{ }} to the shares presented in Tables 1 and 2 of the *Israel Reply Declaration* (an updated version of which is presented below using more recent data).
10. The shares presented in Tables 1 and 2 of the *Israel Reply Declaration* relied on data from the FCC’s Internet Access Report released in June 2014 (reporting data from June 2013). After the filing of the *Israel Reply Declaration*, the FCC released an updated version of this report (reporting data from December 2013). I have updated my calculations using the more recent FCC data to make the calculations comparable to the share calculations in the *FCC Memo*, which also relied on data from December 2013.
11. The table below shows post-merger national shares and the change in such shares for all broadband (residential plus commercial) customers, as well as restricting customers to those receiving at least (i) 3 Mbps downstream/768 Kbps upstream, (ii) 10 Mbps

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<sup>7</sup> *Israel Reply Declaration* ¶ 82-84.

<sup>8</sup> *Israel Reply Declaration* ¶ 82.

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downstream, and (iii) 25 Mbps downstream.<sup>9</sup> The share of the post-merger firm (accounting for the divestitures occurring as part of the three-way Comcast-TWC-Charter transaction) is:<sup>10</sup>

- For all broadband subscribers: 30.6 percent excluding mobile broadband and 10.0 percent including mobile broadband (compared to a post-merger share of {{ }} percent excluding mobile broadband in the *FCC Memo*).
- For the 3 Mbps/768 Kbps threshold: 37.0 percent excluding mobile broadband and 13.7 percent including mobile broadband (compared to a post-merger share of {{ }} percent excluding mobile broadband in the *FCC Memo*).
- For the 10 Mbps threshold: 42.1 percent excluding mobile broadband and 22.2 percent including mobile broadband (compared to a post-merger share of {{ }} percent under the 10 Mbps/768 Kbps threshold excluding mobile broadband in the *FCC Memo*).
- For the 25 Mbps threshold: 56.8 percent excluding mobile broadband and 44.7 percent including mobile broadband, with Comcast's national share only increasing by one percent due to the transaction under this definition of broadband

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<sup>9</sup> I understand that the FCC has computed shares under the 10 Mbps downstream/768 Kbps upstream and the 25 Mbps downstream/3 Mbps upstream speed thresholds, as it has access to Form-477 data for all broadband providers. I do not have access to the Form-477 data from the parties not involved in the transaction and therefore rely on the information in the Internet Access Report, which report total subscriber figures for 10 Mbps and 25 Mbps downstream, with no associated upstream restriction.

<sup>10</sup> The divestiture numbers used in the *Israel Reply Declaration* were based on a divestiture schedule provided by Comcast for video subscribers and assumed a one-to-one correspondence between video and broadband subscribers. I refine the divestiture numbers in this submission using Form-477 data on the actual broadband subscribers in the systems being divested as of December 2013.

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(compared to a post-merger share of {{ }} percent under the 25 Mbps/3 Mbps threshold excluding mobile broadband in the *FCC Memo*, with Comcast’s share only increasing by {{ }} percent due to the transaction).<sup>11, 12</sup>

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<sup>11</sup> The result follows from the fact that TWC had only {{ }} broadband customers with speeds at 25 Mbps or higher (“25 Mbps +”) as of December 2013, meaning that, after accounting for the proposed divestitures, there is no change in broadband shares due to the transaction (with or without mobile broadband) for speeds of 25 Mbps +.

<sup>12</sup> An alternative share calculation was advanced by Professor David Sappington in his Second Supplement on behalf of DISH Network Corporation. (Letter from Pantelis Michalopoulos, Steptoe & Johnson, Counsel for Dish, to Marlene H. Dortch, FCC (Sept. 18, 2014). Professor Sappington assumed that post-transaction, TWC will achieve the same penetration rate for 25 Mbps + broadband connections as Comcast has today and hence that the merged firm’s share of subscribers at 25 Mbps + would be much higher than indicated by today’s combined figures. However, at core, this argument is an acknowledgement of a very large merger-specific consumer *benefit*. In particular, in this case (as in any merger), a higher share of higher-quality products that occurs as a result of the merger reflects a benefit of the merger that flows directly to consumers, not a harm. For example, suppose a merger led to the creation of an entirely new, high-quality product, meaning that the merged firm was a monopolist in that innovation. There would be no plausible claim that such an outcome would be anti-competitive or bad for consumers. And yet that would be the implication of a post-merger share calculation such as Dr. Sappington proposes.

**National Broadband Shares As of December 2013 for Alternative Speed Thresholds**

	Pre-Transactions		Post-Divestiture Transactions		Change in Comcast Share Due to Transactions (including divestitures)	
	Fixed Broadband Only	Fixed and Mobile Broadband	Fixed Broadband Only	Fixed and Mobile Broadband	Fixed Broadband Only	Fixed and Mobile Broadband
<b>National Broadband Shares (All subscribers)</b>						
<b>Comcast</b>	[[ ]]	[[ ]]	30.6%	10.0%	9.2%	3.0%
<b>TWC</b>	[[ ]]	[[ ]]				
<b>National Broadband Shares for at Least 3 Mbps/768 Kbps</b>						
<b>Comcast</b>	[[ ]]	[[ ]]	37.0%	13.7%	10.8%	4.0%
<b>TWC</b>	[[ ]]	[[ ]]				
<b>National Broadband Shares for at Least 10 Mbps</b>						
<b>Comcast</b>	[[ ]]	[[ ]]	42.1%	22.2%	12.3%	6.5%
<b>TWC</b>	[[ ]]	[[ ]]				
<b>National Broadband Shares for at Least 25 Mbps</b>						
<b>Comcast</b>	[[ ]]	[[ ]]	56.8%	44.7%	1.0%	0.8%
<b>TWC</b>	[[ ]]	[[ ]]				

- The main reason why the calculated post-merger shares shown in the table above are somewhat lower than those reported in the *FCC Memo* is that I include non-residential customers in this analysis and compute total broadband shares, while the FCC computes residential-only shares. Although one could make an argument for either calculation—and it is hard to determine the “correct” calculation, since neither one has any meaningful implications for an analysis of the proposed transaction—I chose to rely on the more comprehensive calculation, including both residential and non-residential customers.<sup>13</sup>

<sup>13</sup> For comparison, the post-merger residential-only fixed broadband shares using my methodology are as follows: 31.5 percent (all speeds); 37.6 percent (3 Mbps/768 Kbps); 42.3 percent (10



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Mbps); and 57.6 percent (25 Mbps). Thus, the post-merger shares for all the speeds and the 3 Mbps/768 Kbps thresholds are {{  
}}, while the shares for the 10 Mbps and 25 Mbps thresholds are {{  
}} than the shares for the 10 Mbps/768 Kbps and 25 Mbps/3Mbps thresholds, respectively, in the *FCC Memo*. The use of the upstream speed screens in these scenarios presumably eliminates a few ISPs from the denominator in the FCC’s share calculation, which is likely why the shares in the *FCC Memo* are {{  
}}.

## CERTIFICATE OF SERVICE

I, Melanie A. Medina, hereby certify that on December 23, 2014, I caused true and correct copies of the foregoing Reply to Responses and accompanying exhibits to be served on the following by FedEx Overnight delivery or electronically as noted below:

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